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VIOLATIONS OF HUMAN RIGHTS IN SOUTH AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS

Final report of the Ad Hoc Working Group of Experts on southern Africa prepared in accordance with Commission on Human Rights resolutions 1991/21 and 1992/19 and Economic and Social Council decision 1991/237

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Abbreviations used in the text

AFRA	Association for Rural Advancement
ANC	African National Congress
Azapo	Azanian People's Organization
CODESA	Convention on a Democratic South Africa
COSATU	Congress of South African Trade Unions
DCS	Department of Correctional Services
HRC	Human Rights Commission of South Africa
IBIIR	Independent Board of Inquiry into Informal Repression
ICJ	International Commission of Jurists
IDASA	Institute for Democratic Alternatives in South Africa
IFP	Inkatha Freedom Party
ILO	International Labour Office
LHR	Lawyers for Human Rights
LRA	Labour Relations Act
MASA	Medical Association of South Africa
MI	Military Intelligence
NADEL	National Association of Democratic Lawyers
NCCR	National Co-ordinating Committee for the Repatriation of South African Exiles
NCRC	Legal Resources Centre, the National Children's Rights Committee
NEC	National Executive Committee
NECC	National Education Crisis Committee
NICRO	South African National Institute for Crime Prevention and Rehabilitation of Offenders
NPA	National Peace Accord
PAC	Pan Africanist Congress of Azania
PWV	Pretoria, Witwatersrand and Vaal area
SAAU	South African Agricultural Union
SACP	South African Communist Party
SADF	South African Defence Forces
SADT	South African Development Trust
SADTU	South African Democratic Teachers' Union
SAP	South African Police
SARCC	South African Rail Commuters Corporation
UDF	United Democratic Front
UNHCR	United Nations High Commissioner for Refugees
UNOMSA	United Nations Observer Mission in South Africa

INTRODUCTION

A. Mandate and composition of the Ad Hoc Working Group of Experts

1. Since its establishment in 1967, the Ad Hoc Working Group of Experts on southern Africa has had its mandate extended and broadened through various resolutions and decisions of the Commission on Human Rights and the Economic and Social Council. In pursuance of its current mandate, the Working Group has carried out various inquiries into allegations of human rights violations in South Africa and has reported regularly on the subject to the Commission on Human Rights, the Economic and Social Council and, since 1990, orally, to the General Assembly.

2. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Mikuin Leliel Balanda (Zaire), Chairman/Rapporteur; Mr. Felix Ermacora (Austria), Vice-Chairman; Mr. Zoran Pajic (Bosnia and Herzegovina); Mr. Armando Entralgo (Cuba); Mr. Mulka Govinda Reddy (India); Mr. Elly-Elikunda Mtango (United Republic of Tanzania).

3. At its forty-seventh session, by resolution 1991/21, the Commission on Human Rights decided to renew for a further period of two years the mandate of the Working Group. At its forty-eighth session, by resolution 1992/19, the Commission on Human Rights decided that the Ad Hoc Working Group of Experts should continue to investigate and study the policies and practices which violated human rights in South Africa. The Commission also requested the Working Group, in cooperation with the Special Committee against Apartheid and other investigatory and monitoring bodies, to continue to investigate cases of torture and ill-treatment of detainees and the deaths of detainees in South Africa.

4. Furthermore, the Commission requested the Working Group to continue to bring to the attention of the Chairman of the Commission on Human Rights, for whatever action he might deem appropriate, particularly serious violations of human rights in South Africa which might come to its attention during its studies (resolution 1991/21, para. 21).

5. Also at its forty-seventh session (resolution 1991/21, para. 24), the Commission on Human Rights renewed its request to the Government of South Africa to allow the Ad Hoc Working Group to make an on-the-spot investigation of living conditions in prisons in South Africa and treatment of prisoners. In that connection, in a letter of 16 December 1991 addressed to the South African Government through its Ambassador and Permanent Representative to the United Nations Office at Geneva by the Vice-Chairman of the Ad Hoc Working Group of Experts on behalf of the Chairman, the South African Government was invited to cooperate with the Working Group in the framework of its fact-finding mission. The letter read as follows:

> "I should like to refer to the communications from our Chairman of 12 April, 3 June and 21 August 1991, pursuant to paragraphs 20 and 21 of Commission on Human Rights resolution 1991/21, and the many informal contacts established in the course of this year, particularly the informal discussions between yourself and the Group, regarding a visit to your country. The Ad Hoc Working Group of Experts on southern Africa regrets the fact that it was unable to visit your country this year and, on behalf of the Group, I wish to inform you that it continues to hope that a visit, as envisaged, would be authorized by your Government during the course of 1992. In this respect, the Group is of the opinion that in order to present a complete picture of the situation of human rights in the changing situation in your country, a visit would be of particular importance. In view of the legislative and other reforms instituted in South Africa and the proposed constitutional negotiations which are likely to be initiated later this month, a visit to your country in 1992 would be most appropriate.
>
> In this connection, I should like to advise you that, given the time constraints imposed on its reporting obligations, the Working Group would like to undertake a visit of approximately two weeks during the period 10 to 31 July 1992. In order to make the necessary preparations, it would be greatly appreciated if a response to this request could be received by the end of April 1992."

6. A further letter of 29 May 1992 was addressed to the South African Government through its Ambassador and Permanent Representative to the United Nations Office at Geneva by the Chairman of the Ad Hoc Working Group of Experts. The letter read as follows:

> "I have the honour to refer to the communication of 16 December 1991, addressed to you by Professor Ermacora on behalf of the Ad Hoc Working Group of Experts on southern Africa (copy attached for ease of reference). In this connection, I should like to reiterate the desire of the Working Group to visit your country during the period of 10 to 31 July 1992.
>
> The Working Group has kept itself informed of the recent events and was very encouraged by the results of the referendum which took place on 18 March 1992. In view of the evolution of the continuing negotiations towards a constitutional settlement, the Working Group would be especially interested in gathering first hand information reflecting the situation as it now prevails. In view of its reporting responsibilities to the General Assembly, the Working Group is required to collect the necessary information before the end of July 1992.
>
> Given the short period of time remaining at the disposal of the Group, it would be greatly appreciated if a response to this request could be received from your Government by 10 June 1992, in order to allow the Group to make the necessary arrangements. In the event that a positive reply is not forthcoming the Working Group will have no alternative but to gather the information it requires by holding hearings in the front line States in keeping with the past practice."

7. In addition to these communications, several informal contacts with the Permanent Representative of South Africa took place, the last of which was on 24 June 1992. On that occasion, the Chairman of the Working Group was informed that in view of the very difficult situation prevailing in South Africa, after the deadlock in the negotations at CODESA II, there was no hope for a visit to that country in the near future.

8. It may be mentioned here that notwithstanding the prevailing situation in South Africa, fact-finding missions have been undertaken by Amnesty International in December 1991, the International Labour Office, which conducted a thorough enquiry into a complaint by COSATU in February 1992, and by the International Commission of Jurists in March 1992, in close cooperation with the Government of that country. In the latter part of July 1992, Mr. Cyrus Vance, the Special Representative appointed by the Secretary-General of the United Nations, also visited South Africa. In contrast with the above-mentioned missions, the mandate of the Ad Hoc Working Group of Experts on southern Africa, as established by United Nations Commission on Human Rights, is much wider because it is entrusted with the task of examining the overall human rights situation in South Africa. Furthermore, the Working Group submits written reports every year to the Commission on Human Rights and to the General Assembly since 1991, thus facilitating the dissemination of the most recent information available to the entire international community. The Working Group regrets the consistent failure of the Government of South Africa to accede to the request of the Commission on Human Rights to allow a visit to that country. A change in the attitude of the Government of South Africa would permit the preparation of a report based on information and testimony gathered from a much wider cross-section of people and a larger spectrum of institutions. On behalf of the Chairman, the Vice-Chairman introduced the preliminary report of the Working Group (A/47/676) at the forty-seventh session of the General Assembly and referred to the fact that the Government of South Africa once again failed to authorize a visit to that country by the Working Group. The Working Group once again wishes to urge the Government of South Africa to concede to the requests of the Commission on Human Rights and allow a visit of the Working Group to that country.

9. In the circumstances, the Working Group had no alternative but to follow the past practice and hear testimonies outside South Africa. The Working Group, therefore, conducted hearings in Harare (Zimbabwe), from 20 to 24 July 1992 and in Gaborone (Botswana), from 27 to 30 July 1992 for the purpose of receiving evidence and hearing testimony from individuals and organizations having first hand experience with the situation in South Africa falling into the framework of the mandate of the Ad Hoc Working Group of Experts on southern Africa. The topics on which the Working Group received evidence and heard testimony were the following: the right to life;

detention, and deaths in police custody; capital punishment and executions; administration of justice; political trials; the situation regarding the escalating violence resulting in deaths; conditions after the repeal of certain apartheid legislation; return of exiles; constitutional negotiations; the right to education; and the situation of children.

B. Organization of work and working methods adopted by the Ad Hoc Working Group of Experts on southern Africa

Meetings and fact-finding mission

10. The Working Group, in keeping with past practice, decided on the modalities for the fact-finding mission by taking into consideration both the mandate entrusted to it by the Commission on Human Rights and the Economic and Social Council and the special situation prevailing at that time after the deadlock in constitutional negotiations in mid-May of CODESA II in South Africa.

11. With a view to collecting as much information as possible and gathering testimony on developments since its latest interim report (E/CN.4/1992/8), the Working Group heard the testimonies from a total of 19 witnesses (see paragraph 9 above).

12. During the course of meetings held in Harare, testimony was heard from representatives of the African National Congress (ANC), the Independent Board of Inquiry into Informal Repression (IBIIR), Lawyers for Human Rights (LHR), the National Association of Democratic Lawyers (NADEL) as well as a professor of the University of Zimbabwe and another witness in their personal capacities.

13. The Working Group further gathered evidence in Gaborone from representatives of the ANC, the Centre for Applied Legal Studies, the Human Rights Commission of South Africa (HRC), the Institute for Democratic Alternatives in South Africa (IDASA), the Legal Resources Centre, the National Children's Rights Committee (NCRC), the National Co-ordinating Committee for the Repatriation of South African Exiles (NCCR), the National Education Crisis Committee (NECC) and the Pan-Africanist Congress of Azania (PAC) as well as another witness in his personal capacity.

14. The Working Group received testimony, in Geneva, from representatives of the International Labour Office (ILO) regarding the recent developments with respect to trade union law and the situation of black workers in South Africa. The special report of the ILO Director-General to the 79th session of the International Labour Conference on the application of the Declaration concerning action against apartheid in South Africa, and the First Supplementary Report of the ILO Fact-finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa and the comments of the Government of South Africa on it, submitted by the ILO representatives, have been noted by the Working Group.

Procedure followed in conducting the fact-finding mission

15. Following its practice and in keeping with its mandate, the Working Group requested cooperation from the Member States concerned, intergovernmental and non-governmental organizations, as well as human rights institutions and private individuals, in order to hear the greatest possible number of witnesses that might provide it with reliable information on the questions falling within its mandate. The procedure followed and measures taken by the Working Group with regard to the organization of its fact-finding mission are described below.

Relations with Governments

16. On 23 June 1992, the Chairman, on behalf of the Ad Hoc Working Group of Experts on southern Africa, sent a letter to the Ministers for Foreign Affairs of Zimbabwe and Botswana drawing their attention to the Working Group's mandate and activities and inviting their Governments to cooperate in helping it to fulfil its mandate.

17. The Ad Hoc Working Group of Experts would like to express its deepest thanks to these Governments for the full cooperation it enjoyed.

18. In the letters addressed to the Government of the Republic of South Africa, the Ad Hoc Working Group of Experts drew the Government's attention to its activities and to the relevant resolutions of the Commission on Human Rights and asked whether the Government could in any way facilitate

the Working Group's work in conformity with the mandate described in those resolutions within the framework of its fact-finding mission.

Relations with United Nations bodies and the specialized agencies

19. The Working Group welcomes the close cooperation it has enjoyed with the International Labour Organisation, and wishes to repeat its request to be kept informed of the holding of any conferences, seminars or symposia organized under the auspices of the Special Committee Against Apartheid and the International Labour Organisation, in order to follow the development of the situation in the region and to be in a position better to analyse the supplementatry information it receives on a regular basis.

Relations with the Organization of African Unity (OAU)

20. The Ad Hoc Working Group of Experts addressed a letter to the Administrative Secretary-General of the OAU informing him of the proposed mission.

Relations with African liberation movements, non-governmental organizations and private individuals

21. On 26 June 1992, the Centre for Human Rights, on behalf and at the request of the Ad Hoc Working Group of Experts, advised several non-governmental organizations and the main African liberation movements of the Working Group's mandate and invited them to transmit any information that might help it to fulfil its mandate. Furthermore, some individuals testified before the Working Group in their personal capacity while strictly following the procedure applied by the Working Group as described in the following paragraphs.

Testimony collected

22. During its fact-finding mission, the Ad Hoc Working Group of Experts held 11 meetings and heard 17 witnesses. Two witnesses testified in Geneva at its 846th meeting. The witnesses who testified are listed below. Besides these direct accounts, the Working Group had a large volume of documentation

transmitted by various organizations and/or individuals who had not been able, for reasons beyond their control, to appear before the Working Group during its mission. The records of the testimony given in public session are on file with the secretariat of the Ad Hoc Working Group of Experts on southern Africa.

23. The following witnesses were heard: Stephen Collins (Institute for Democratic Alternatives in South Africa); Ahmed Gora Ebrahim (Pan Africanist Congress of Azania); Emmanuel Gaisa (Independent Board of Inquiry); Fink Haysom (Centre for Applied Legal Studies); Jane Elizabeth Hodges (International Labour Office); Ivor Jenkins (Institute for Democratic Alternatives in South Africa); Carlitos João Maria (personal capacity); Narandran Kollapen (Lawers for Human Rights); Evangelina Shirley Mabusela (National Children's Rights Committee); Penuell Maduna (African National Congress); Tsatsi Moerane Marumo (National Association of Democratic Lawyers); Lentswe Mokgatlhe (National Co-ordinating Committee for the Repatriation of South African Exiles); Felix Isaias Ndimene (personal capacity); Sandile Noyxina (African National Congress); Hasu Patel (University of Harare); Denzil Owen Potgieter (Advocate); Angelina Matsie Ramorola (National Education Crisis Committee); Safoora Sadek (Human Rights Commission of South Africa); Auret van Heerden (International Labour Office).

24. In conformity with the procedure followed by the Ad Hoc Working Group of Experts since 1967, each witness, after stating his or her identity, was invited by the Chairman to take an oath or make a solemn declaration.

25. The Chairman explained to each witness the goal of the mission and the different subjects which the Working Group was responsible for investigating. Whenever a witness did not speak or understand one of the working languages of the United Nations, the Working Group used the services of interpreters, who were also required to take an oath or make a solemn declaration that they would do their best faithfully to interpret the testimony.

C. Other activities of the Ad Hoc Working Group of Experts during its mission

26. During its visit to Zimbabwe, on 24 July 1992, the Working Group had consultations at Harare with the Minister of Foreign Affairs Mr. Shamuyarira.

An exchange of views took place between the members of the Working Group and the Minister of Foreign Affairs. The situation in South Africa, as it existed then, was discussed in depth. Also in Botswana, the Working Group had consultations at Gaborone with the Minister of External Affairs, Dr. G.T.K. Chiepe, on 28 July 1992. On that occasion, the Minister gave a brief historical overview and this was followed by a detailed discussion on the situation of human rights in South Africa.

27. During its fact-finding mission the Working Group held a press conference in Gaborone on 30 July 1992, with a view to informing international public opinion, making the Working Group's mandate better known while referring to its activities and those of the United Nations.

D. Basic international norms affecting the questions within the Ad Hoc Working Group of Experts' competence

28. In preparing this report, the Working Group has taken into consideration the relevant international instruments applicable in the area of its mandate. It should be pointed out that all forms of racial discrimination, including apartheid, are considered today contrary to one of the fundamental principles of international law concerning human rights.

29. In the opinion of the Ad Hoc Working Group of Experts, the Universal Declaration of Human Rights represents the United Nations General Assembly's interpretation of the expression "human rights and fundamental freedoms for all" appearing in the passages quoted from the Charter of the United Nations. The Working Group reaffirms that the obligations incumbent on Member States under those provisions of the Charter have been broadened by the more precise set of rules contained in the Universal Declaration and that the provisions of the Universal Declaration should be recognized as general principles of international law in view of the fact that they have been accepted by a large majority of Member States and international organizations.

30. The preliminary report of the Working Group has already been presented to the General Assembly at its forty-seventh session (see paragraph 8 above). The present report, which contains conclusions and recommendations, was prepared in conformity with the mandate entrusted to the Ad Hoc Working Group

of Experts by the Commission on Human Rights and the Economic and Social Council in the resolutions mentioned above. It is therefore based principally on the first-hand information collected by the Working Group in the form of oral testimony and written communications from private individuals or organizations during the fact-finding mission it conducted from 20 to 30 July 1992. In addition, the Working Group carefully studied and analysed documents of the United Nations and specialized agencies, official journals from South Africa, legal provisions, publications, journals and reviews from various countries, as well as works dealing with questions relating to its mandate.

31. The Working Group then met from 30 November to 11 December 1992 at the United Nations Office at Geneva to consider and adopt the present report.

I. RIGHT TO LIFE

32. The Working Group noted a deterioration in the situation in South Africa generally because the constitutional negotiations had very frequently been halted due to a deadlock reached on issues of a constitutional nature. The Working Group has taken note of the fact that following the Boipatong massacre, ANC, one of the negotiating parties, declined to continue unless certain conditions were met by the Government of South Africa. At the time of the finalization of this report the situation remains the same because of a series of incidents, and in particular a further incident in Bisho, Ciskei in September 1992 when several persons who took part in a peaceful march were killed when the Ciskei police opened fire on them. The Working Group regrets the fact that the constitutional negotiations are frequently interrupted, thus delaying the progress towards a successful end to the constitutional talks. The Working Group takes a very serious view of the allegation of the complicity of the security forces in South Africa in the ongoing violence resulting in approximately eight deaths every day.

A. Deaths

33. According to the written information provided by the Human Rights Commission of South Africa (HRC), during the period January 1992 to 17 November 1992, 3,150 deaths due to political violence were recorded. A

total of 250 deaths and a total of 450 injured were recorded as a result of 250 train attacks. The total number of deaths for the same period attributed to vigilante action came to 230 and that attributed to security forces action was 154. The total number of those injured due to political violence came to 4,657.

34. The representative of the Independent Board of Inquiry into Informal Repression (IBIIR), in his testimony at the 829th meeting, referred to the attack on residents of Phola Park on 8 April 1992 by Battalion 32, when two residents were killed, 40 residents were injured and three were raped. He stated that Captain Mark Hermanson, the officer commanding the company to which the troops involved are attached, claimed that the troops had not assaulted any residents, but had only acted in a "heavy-handed" manner, and that the indiscriminate firing at the squatter camp had been justified as the soldiers had been acting in self-defence after they had been fired on. The representative of IBIIR continued his testimony and said that on 26 May 1992, lawyers representing Battalion 32 conceded that members of the unit may have "technically committed acts of violence", but denied that they had committed acts of murder, rape and assault. The Goldstone Commission issued its report on this incident in June 1992 and reportedly found that due to the nature of the training given to Battalion 32 and the role which it had played previously, it was not suited to be employed as a peace-keeping force in South African townships. The Commission recommended, he said, that Battalion 32 be immediately withdrawn from all such duties. In addition, the Commission expressed its concern about the attitude of the Battalion's senior officers, who seemed to view the deployment of Battalion 32 in townships in terms of a war situation rather than that of a peace-keeping force. He further stated that the Commission recommended that the South African Defence Forces (SADF) investigate whether this attitude was prevalent in other SADF unities employed in a similar role. He added that the SADF had said that it needed time to study the report fully before it officially determined an official response to it. The witness said that in July 1992 President De Klerk announced the disbanding of the controvertial Battalions 31 and 32 and that the "Koevoet" forces would also be disbanded. The witness stated further that regulations prohibiting the carrying of dangerous weapons in public places and unrest areas would be enacted and policy decisions regarding hostels were in the process of being implemented.

35. The representative of I8IIR then referred to train violence and said that at the end of February 1992, there had been 48 incidents and 112 people had been injured. Referring to the report "Blood on the Tracks" which was compiled by his organization, the witness described in detail the various aspects of the numerous incidents which had taken place this year, when train commuters were attacked. After examining the evidence, including some contradictory testimony given to the Goldstone Commission under the chairmanship of Mr. Hart Steen, a regional court magistrate, the witness stated that one of the most disturbing things to emerge from the Commission was the manner in which authorities had responded to the situation. The inquiry was conducted from 4 to 21 May 1992, and most of the evidence came from police witnesses, from South Africa Rail Commuters Corporation (SARCC) and SPOORNET. An investigation in loco was conducted during the course of the inquiry, which revealed that it was extremely difficult for members of the South African Police (SAP) to search commuters before they boarded trains. It became evident that many stations were inadequately fenced, which meant that potential attackers would have easy access to trains and stations. At the time when the witness testified, only one successful prosecution had taken place. The witness stated that three major train attacks had taken place in June 1992: on 4 June at Dube station in which seven people suffered hack and stab wounds, on 10 June at Nancefield station in which 12 people suffered hack and stab wounds and on 15 June at Daveyton station in which six people were shot dead.

36. On the other hand, the witness further stated, on 14 June the SAP carried out a raid on a train carrying IFP supporters to a rally at Jabulani station in Soweto, and seized six AK-47 rifles, 27 other firearms and over 2,000 axes, assegais, pangas and knobkerries. Twenty-seven people were arrested and, apart from a member of the SAP, no one was injured. On 15 June, the witness said, the SAP returned all sticks and shields which had been seized during the raid to the IFP officers in Johannesburg, claiming that these were not dangerous weapons and thus the SAP had no right to confiscate them. According to the testimony given by a representative of ILO, 75 trade unionists were assassinated in the Johannesburg area alone in the course of this year.

37. The Guardian of 3 January 1992 reported night-time explosions damaging two post offices and the killing of two policemen by men armed with AK-47 rifles. In a separate attack, two other policemen were shot to death. The report suggests that the explosions and killings were right-wing attacks intended to show dissatisfaction with the Goverment's approach to the CODESA negotiations.

38. The Weekly Mail of 3-9 January 1992 reported that a disillusioned senior officer of Military Intelligence had broken ranks to provide details of the role of the SADF in promoting township violence. Dr. Ben Conradie, a former school principal, was reportedly recruited to direct a covert operation called "project Henry" which supplied money and training to a vigilante group opposed to the United Democratic Front. False companies allegedly created, trained and supported various organizations which fostered "black-on-black" conflict in order to undermine the ANC.

39. The Weekly Mail of 10-16 January 1992 reported that a senior official of Inkatha, Mbongeni Khumalo, had left the organization because he believed that it had become a vehicle for instigating violence against fellow blacks. Mr. Khumalo made several allegations about the organization in Ulundi, including: (i) that Transvaal Inkatha leaders, including Themba Khoza, had received combat training from Military Intelligence just before the outbreak of violence on the reef in 1990; (ii) that a KwaZulu police officer, trained in guerilla warfare and privy to Inkatha central committee meetings, had led an attack on an ANC funeral in Wesselton; the officer was subsequently released by the police and his weapons returned to Ulundi; and (iii) that Inkatha's top leadership had received instruction from Military Intelligence.

40. The Guardian and The Independent of 14 January 1992 reported the murder of Molatu Lebeta, aged 60 and the father of six. The killing allegedly took place because his dog had mated with a dog owned by a white couple. Outraged that a mongrel bitch owned by a black man had mated with her dog, the white woman allegedly incited a white mob to murder Lebeta.

41. The Guardian of 24 January 1992 reported the testimony of two black youths alleging that they were encouraged, equipped and trained by the security forces to carry out acts of violence against targets linked to the

ANC. It was claimed that the youths were linked to the Inkatha Freedom movement. It was alleged that the violence was still being sponsored as late as Januray 1991, a year after President De Klerk had committed his Government to a negotiated settlement.

42. The Guardian of 6 February 1992 reported allegations that Zulu leader Mangosuthu Buthelezi had received funds from South African Military Intelligence to finance military training for 200 members of Inkatha. According to the charges of an Inkatha defector, Mbongeni Khumalo, several of those trained with the funds had become notorious assassins. In this connection, it may be noted that the Working Group referred to the Government's funding of the IFP, as admitted by it, in order to discredit the ANC (see E/CN.4/1992/8, para. 29).

43. The Times of 10 February 1992 reported that 15 people, including a young child and an ANC official, had been killed in fighting across South Africa. The article said that the ANC official, Sikhumbo Ngwenya, was shot dead by armed gunmen as he left a restaurant.

44. The Times of 10 February 1992 reported that six people had been killed and nearly 20 people injured in fighting between hostel dwellers and township residents in the Meadowlands district of Soweto. It was alleged that, according to the ANC, the hostel dwellers, allegedly supporters of the IFP, resorted to violence after the funeral of one of their comrades.

45. The Independent, The Times and The Guardian of 19 February 1992 reported a night of violence in South Africa in which six members of a family were killed when their van was ambushed in Natal province, four men were shot and flung from a train and an eleventh person was killed by stoning in the Meadowlands district.

46. The Weekly Mail of 21-27 February 1992 reported that hundreds of residents of Khayelitsha's site C shack settlement dismantled their homes and fled the area after an attack by balaclava-clad men which left five people dead and at least 36 dwellings razed.

47. The Independent of 28 February 1992 reported the arrest of two whites in the Eastern Transvaal town of Witbank charged with killing five blacks in a staged minibus accident. According to police reports, the white men, who both worked for a local insurance company, had taken out life-insurance policies on a group of blacks they had recruited to sell clothes, and named themselves as beneficiaries.

48. According to The Guardian of 28 February and 12 March 1992, five blacks were shot dead by gunmen from the back of a moving truck in the township of Katlehong in what appeared to be a revenge attack by Inkatha. These killings reportedly followed the killing of five men near Phola park, an ANC stronghold.

49. The Independent of 28 February 1992 reported that a former police commander had admitted in court that he had ordered the massacre of 11 black men, women and children at a funeral vigil in Natal in 1988 (the Trust Feed case). According to Captain Mitchell, after the massacre he admitted his responsibility for the killings to the head of the riot police, who took no action on the confession. After the killings, the police reportedly made a statement saying that an unknown number of blacks had been responsible for the slayings, implying that they were part of a political feud. It was also reported that before the trial, South Africa's chief investigator, Lieutenant-General Ronnie van Westhuizen, was taken off the case amid allegations that he was covering up evidence of police involvement in the massacres.

50. The International Herald Tribune of 19 March 1992 reported that five people were killed in unrest in black townships in the hours before South Africa's whites-only referendum on political change. It was alleged that the violence had been orchestrated to persuade apprehensive whites to vote no in the referendum.

51. An article appearing in The Sowetan of 20 March 1992 claimed that scores of Alexandria residents had fled their homes to seek shelter in churches as violence in the township continued unabated. In a joint statement, the ANC, AZAPO, PAC and Inkatha said they were appalled by the exodus of families from the area. Residents reportedly blamed hostel dwellers for the upsurge in violence.

52. The Sowetan of 23 March 1992 reported that an official of the South African Communist Party (SACP), also a member of the ANC, had been killed along with two others in a hand-grenade explosion in Sebokeng. The SACP and the police, which called the death a suicide, held conflicting views as to the cause of the deaths.

53. According to The Sowetan of 24 March 1992, three commuters were killed and several injured in train attacks despite a ban on the carrying of weapons.

54. The Independent of 5 April 1992 reported factional killings in the Johannesburg area. Residents of a squatter camp in Katlehong alleged that a mob of well-armed men had attacked them during the night, firing automatic weapons, throwing petrol bombs and hacking at their victims. At least 20 people were reportedly killed, including two babies.

55. The Guardian and The Times of 30 April 1992 reported that an expelled Conservative Party MP, Koos Botha, was arrested in connection with two bomb attacks on a Pretoria school the previous July. The Guardian report also stated that the bombing campaign appeared to have abated since the previous month's all-white constitutional referendum: there had reportedly been more than 80 explosions in the months preceding the referendum while only one had been reported since. The report noted however that the so-called "third force" violence, directed against the black population and allegedly involving members of the security forces, showed no signs of diminishing.

56. The Journal de Genève of 1 May 1992 reported that Captain Brian Mitchell of the SAP had been sentenced to death by a Pietermaritzburg court for his role in the Trust Feed massacre. Captain Mitchell allegedly obtained information regarding a UDF meeting in December 1988, and in response to this information, sent four Zulu officers to execute those participating. A mistake was made in identifying the house and 11 people, including a group of women and children who were participating in a funeral vigil, were killed. The article noted that, given the moratorium on the death penalty, it was unlikely that the convicted Captain Mitchell would be executed.

57. The Times and the Journal de Genève of 5 May 1992 reported that the ANC and a number of other parties and trade unions were calling for a week-long

boycott of South African trains to protest the escalation of violence on the Johannesburg commuter trains. It was reported that the IFP declined to support the boycott. Reportedly, 97 blacks were killed and 483 injured on the railways between mid-1990 and the end of 1991 and approximately 160 blacks were killed and 300 injured in the first four months of 1992.

58. Both The Guardian and The Times of 9 May 1992 reported that General C.P. van der Westhuizen, head of South Africa Military Intelligence, and General van Rensburg, then a senior police officer, had been implicated in the 1985 assasination of Matthew Goniwe and three of his colleagues. The account given in The Guardian reported that the Transkei homeland leader Major-General Bantu Holomisa had provided journalists with a secret army signal that implicated General van der Westhuizen in the assasination plot. Both The Times and The Guardian articles also reported allegations that the SAP had been orchestrating an assasination campaign from secret bases in the southern Transvaal.

59. Allegations were widely reported in early May 1992 that General van der Westhuizen and General van Rensburg, had ordered the 1985 killings of anti-apartheid activists Matthew Goniwe, Fort Calawa and two others. The weekly New Nation published an "extremely secret" military report dated 7 June 1985 which reportedly referred to a conversation between the two generals. This charge was part of a series of allegations that security forces had killed anti-apartheid activists in order to undermine the anti-apartheid movement. It was also alleged that a secret police base in the Vaal area was involved in further killings.

60. The Guardian of 3 June 1992 alleged that there was an extensive SAP and SADF network involved in creating, training, and supporting "moderate" black organizations. Companies masquerading as private educational groups were said to be funded by the SADF using secret state money. These companies reportedly supported township organizations involved in the so-called "black-on-black" violence. There were also allegations of systematic torture and executions in the black townships, according to reports published on 12 June 1992 by Le Monde.

61. The Weekly Mail of 19-25 June reported allegations made by Mosotho Tsoteso, a Sebokeng resident, that warrant officer Thys Nolte (of the SAP) was actively involved in planning violent and unlawful activities in the region. Tsoteso alleged that he had been approached by Nolte to carry out armed attacks on two residences and bombings of two schools. It was further alleged that Nolte was the officer investigating the death of one of the people whose death he had ordered.

62. A 20 June 1992 story in The Guardian outlined the statements of John Horak, retired Chairman of the Strategic Committee of the State Council in 1990. In an interview with the Afrikaans weekly Vrye Weekblad, Mr. Horak alleged extra-legal police activity, including the murder of Steven Biko, the illegal surveillance of judges, media infiltration and attempts on the lives of anti-apartheid activists.

63. The Weekly Mail of 3-9 July 1992 reported that riot police had fired on fleeing protestors at a march organized by COSATU.

64. In a front page story from its 21-27 August 1992 issue, The Weekly Mail reported that President De Klerk was considering undertaking an independent inquiry to investigate new evidence concerning the assassination of activist Matthew Goniwe after an informant, who had given important information linking the Eastern Cape "Hammer Unit" to the 1985 killing, was found shot dead. The article also reported that the question concerning the alleged involvement of General van der Westhuizen in the murder of Goniwe was not addressed.

65. Le Monde of 18 August 1992 reported a gunfight in Ivory Park, in the north-eastern section of Johannesburg, which resulted in four deaths. The role of the police is being investigated. Observers at the scene were alleged to have seen police tanks at the site just before the exchange of fire, and claimed that the police had used tear gas to prevent ANC groups from protecting themselves while allowing Zulus to flee the scene.

66. It may be noted here that the South African Government, under special legislation recently introduced in that country, has provided for a general amnesty for political crimes which would also benefit high officials in the security forces who have committed crimes under the apartheid system (see paras. 129 and 132 below).

B. Escalation of the death toll during the continuing violence

67. The question of the escalating violence both in Natal and in Transvaal was a subject to which many witnesses repeatedly referred. The Working Group is most concerned about the large number of people who continue to die at an average rate of eight a day, as alleged by numerous witnesses who testified before the Working Group.

68. The International Commission of Jurists (ICJ) carried out a fact-finding mission during March 1992 in order to evaluate the situation regarding the breakdown of law and order in Natal and Transvaal resulting in death and injuries. Referring to the 1988 Trust Feed massacre, the report of the mission states that, according to the Supreme Court judgement of 23 April 1992, the attack was the final event in a planned security forces operation to disrupt the community, remove an established resident's association and give Inkatha control of the area. The report quoted Justice Andrew Wilson, as saying that the behaviour of police officers was "totally unacceptable" and that the killing at Trust Feed had been committed "at the request of officers in the SAP" (see the ICJ report Agenda for Peace, pp. 4-6).

69. It was reported that Justice Wilson had called for a public inquiry into the circumstances surrounding this case. The judgement confirmed the views expressed to the ICJ by lawyers and church leaders in August 1990 and during March 1992. The report states that the Trust Feed incident is not an isolated case.

70. The same report describes the events of 22 March 1992, when the members of the ICJ team visited Mooi River, a small town 70 km north-west of Pietermaritzburg. The members of the Commission questioned the owner of a beer shop, who stated that the previous week riot police, who were white, had searched his premises and demanded to see his papers, as well as those of his customers. According to three eyewitnesses questioned by the ICJ team, as they were leaving one of the officers raised his rifle and fired at a customer who was about six yards away, killing him instantly.

71. The ICJ mission investigated an attack which took place on 13 March 1992 at the Uganda Squatter Camp, Umlazi, Durban. They concluded that the raid had been carried out by a large group wearing KwaZulu police uniforms.

72. According to information received, it would appear that key witnesses in trials, especially those relating to township violence, are subjected to harassment. It has been alleged that some of these witnesses have been killed either before or soon after their evidence was taken. The Working Group views this situation with great concern, and would like to stress the great importance of providing all potential witnesses the necessary protection from any form of victimization.

73. At the Working Group's 837th meeting a representative of the Institute for Democratic Alternatives in South Africa (IDASA) said that 171 policemen had been killed this year, clearly demonstrating a lack of respect and faith in the police. He stated that in KwaZulu, for example, the law enforcement mechanism has little support and is generally perceived as supporting the IFP. The problem of police jurisdiction had been repeatedly identified as being a major obstacle to peace and law and order and his organization had been continually requested to call the SAP to intervene in conflicts between the KwaZulu police and ANC supporters. In these circumstances, witnesses felt very insecure and did not come forward to testify in court cases or confide in the police, as they did not perceive the KwaZulu police as acting in their interests.

74. An academic and attorney who practices as a human rights lawyer in a leading law firm in South Africa testified before the Working Group at its 838th meeting. After a brief sketch of the background to the Natal violence in 1987 which spread to the Transvaal in 1990, he said that it was now accepted as fact that 14,500 people had been killed since 1987. He stated that the violence was essentially a result of the failure of the policing and law enforcement agencies to intervene in circumstances where they should have done so, and of the failure of the legal system to ensure that there were consequences for the perpetration of violence.

75. Referring to the train attacks which had caused many deaths and injuries, he said that in the very few cases in which the police had managed to apprehend the attackers the prosecution had been ineffective except in one case, which involved a victim who subsequently attacked one of the attackers.

76. Referring to the numerous attacks launched from hostels on township residents, the same witness pointed out that there was a total absence of effective investigation and prosecution of the alleged culprits. The witness further stated, that no attempts were being made to disarm hostel-dwellers in particular or large groups moving through the townships, who were often identified as hostel dwellers or as IFP supporters and who were carrying dangerous weapons. A critical component of the NPA, which is a multi-party initiative to secure peace in South Africa, he said, was that the Government would make it clear that the police were enjoined to disarm such groups or any persons carrying dangerous weapons at any gatherings. He said that the Government of South Africa took more than five months before the necessary legislation was promulgated. Although the legislation in question was not satisfactory, it did constitute sufficient basis for intervention by the police but there was a conspicuous absence of police action in this connection.

77. Referring to the complicity of the security forces, the witness referred to the judgment of Justice Wilson in the Trust Feed case (see para. 68 above).

Boipatong

78. Among the numerous incidents of violence reported to the Working Group, the Boipatong massacre was amongst the most serious in regard to the violation of the right to life.

79. It was widely reported that in an attack on the black township of Boipatong which took place on 17 June 1992, more than 40 people lost their lives. Survivors of the massacre alleged that police vehicles were involved in the massacre and that there were links between the SADF and the KwaMandala hostel from where the Boipatong attack was reportedly launched. During the Goldstone Commission inquiry, it was widely reported that a black policeman reportedly alleged the complicity of the security forces in the Boipatong masscre. According to recent reports, it has also been alleged that tape

recordings (amounting to about 13 hours) reflecting the police activities just before, during and soon after the massacre took place were erased accidentally. According to several witnesses who testified before the Working Group, members of the IFP were also implicated in the attack.

80. The representative of IBIIR, at the Working Group's 829th meeting, said that a group of approximately 300 to 400 men, armed with firearms and sharp instruments, moved through Boipatong township on the night of 17 June, indiscriminately looting and attacking residents. The attack took place between 10.00 and 10.30 p.m. The death toll was more than 40 and among those killed were old women and a nine-month-old baby. Many residents were injured and there was extensive damage to property. The residents, he stated, alleged that the attackers came from the nearby KwaMandala hostel. The township residents also alleged that policemen were involved in the attack and that they escorted attackers into and out of the township in police vehicles. The SAP denied any involvement in the incidents on 17 June, the witness stated, and promised a thorough investigation of any allegations of police involvement.

81. On 22 June 1992, when President De Klerk tried to visit Boipatong, the witness stated, the angry township residents compelled him to leave the township and the ensuing events resulted in three deaths when SAP opened fire, although it was alleged that no order to fire was given.

82. On 2 July 1992, the President stated that the Goldstone Commission was charged with the responsibility of investigating the Boipatong massacre. The terms of reference of the Commission, according to a statement by Justice Goldstone on 6 July 1992, inlcuded determining the identity of the persons directly responsible, the cause of the massacre, the action taken by members of the SADF who were in the vicinity of the KwaMandala hostel after the massacre, whether action could or should have been taken by SAP to avert the massacre and the efficiency with which investigations had been carried out by the SAP. The Commission has not yet concluded its inquiry.

83. Several newspapers reported charges that the police had fired on a crowd protesting President De Klerk's visit to Boipatong in the wake of the June massacre. Three died and 18 were wounded in the incident.

84. In a statement the Minister of Law and Order, Mr. Hernus Kriel, said that the severe criticism of the police's handling of the Boipatong massacre as contained in the Waddington report would be taken very seriously and approached with the necessary gravity by his Government and the police. The ANC stated that the Waddington report on the police investigations and response to the Boipatong massacre was a damning indictment of the standards of policing in South Africa.

85. As a result of the Boipatong massacre, inter alia, the ANC announced its withdrawal from all negotiations with the Government until such time as their demands had been met.

86. The representative of IBIIR referred to the difficulties faced by the witnesses who came forward to testify before the Goldstone Commission and who said that they had been harassed and intimidated. He said that no schemes for witness protection existed in South Africa, apart from a "private scheme" put together by lawyers with funding from independent sources. As an example, the representative of IBIIR referred to a witness who gave evidence under a pseudonym concerning the Black Cats (a criminal gang which has terrorized Wesselton township) who, he said, were given weapons training in Inkatha's Mkuze camp. A few days later, the man's mother was stabbed to death. According to lawyers acting for such witnesses, some who have yet to testify have had their homes attacked and their relatives have been assaulted. A witness known as "Majole", who gave evidence to the Goldstone Commission on the role of the defence units in the Phola Park squatter camp incident, was shot a number of times. The representative of IBIIR said that his organization faced a great deal of difficulty in assisting the Goldstone Commission because witnesses were intimidated. If the evidence is given under an assumed name, the testimony is rejected as "hearsay".

87. Referring to the question of violence in Transvaal and especially the Boipatong massacre, the representative of the National Association of Democratic Lawyers (NADEL) said that 78 people had been arrested and that virtually all of them were members of the IFP.

88. The same witness also referred to the violence in Natal and said that the situation was exacerbated by the fact that the KwaZulu police were at the

heart of the Inkatha structure; the Minister of Police in the KwaZulu was said to be President of the IFP. A report by NADEL had alleged that the police force was being used as the private army of the IFP. The witness said that members of Natal communities had alleged that no action was taken against the KwaZulu police after they had assaulted people or when IFP supporters attacked their political oponents; that was the main reason for the call to disband the KwaZulu police or to merge them into the SAP.

89. The representative of IBIIR, testifying before the Working Group at its 829th meeting, referred to the question of violence and stated that although there was no single determining factor, some of the contributing factors to the violence included, inter alia, the aggressive recruitment campaign of the IFP, the appalling conditions in both single-sex hostels and squatter camps, and alleged police connivance. The Working Group was particularly concerned about the references made by several witnesses in respect of the living conditions in single-sex hostels where much of the violence is alleged to have originated.

90. The witness informed the Working Group that IBIIR was actively involved in assisting the Special Committee set up by Justice Goldstone to investigate the violence in a number of townships in the East and West Rand and in the Vaal. He further stated that his work primarily involved the recording of statements of victims and eyewitnesses and that, since the creation of mechanisms under the NPA, it was now possible to channel the information to the relevant authorities.

91. Referring to the current situation in South Africa, the same witness said that assassinations, abductions and attacks on individual political activists continued, and that people targeted for attack were not necessarily in the top echelons of their organizations but were often those who were most effective. As an example, he cited the case of N'Kombozo Bhato in Embali, Pietermaritzburg, Natal, who was involved in the peace initiative in the province. Members of Umkhonto we Sizwe, the military arm of ANC, and young activists in the ANC Youth League were also among those targeted for attack. The witness further stated that despite the signing of the Peace Accord, the violence continued. He also stated that his organization continued its research and was especially concerned with the possibility of a "third force"

or outside agency, unconnected with either ANC or IFP, manipulating the violence in the Reef for its own benefit. The same witness stated that his organization was in possession of numerous statements from eyewitnesses who alleged that they saw white people among the attackers. While stressing the difficulties involved in ascertaining the truth in such a situation, for a variety of reasons, the witness stated that such reports had been received by his organization from all over the Reef and from a wide variety of people, and were therefore difficult to discount. He stated that his organization had pledged to assist the Peace Secretariat and the various other commissions set up under the NPA and that it was already involved in several investigations.

92. The same witness further stated that the hostels had played a central role in the violence. The hostels, built at a time when African people were seen as temporary sojourners in South Africa's towns and cities and which were mostly dilapidated structures built to house single males, had became "fortresses of fear". Township residents regarded hostel dwellers as intruders and despised them. As a result, hostel dwellers had borne the brunt of social and political injustice in a hostile urban environment. The concentration of single men and the closed nature of these hostels which historically were run along ethnic lines, helped foster group identity and created a perfect terrain for violence and forced recruitment, thus resulting in strongholds of particular organizations and permitting rapid mobilization, instant meetings and preparation of armed attacks.

93. The witness further stated that the hostel and hostel dwellers themselves had not been immune from attacks and that a number of hostel dwellers had been forced to flee their hostels when Inkatha began its recruitment campaign to coincide with its launch as a national political party.

94. In the in-depth report "Fortress of Fear" on the role of hostels published by the IBIIR, it is alleged that since July 1990 more than 260 attacks had been launched from hostels, resulting in more than 1,200 deaths and nearly 3,700 injuries. The witness stated that those figures were conservative and based solely on attacks recorded in the media and when hostel dwellers had been positively identified as participating in the attacks. The witness stated that the level of support for Inkatha in the hostels varied from 87 per cent to 100 per cent, according to Humphrey Ndlovu of Inkatha, who was interviewed by IBIIR.

95. It may be noted that the Memorandum of Understanding signed by President De Klerk and Nelson Mandela in Johannesburg on 26 September 1992, states the following (item (d)):

> "- The Goldstone Commission has indicated that the problem of the hostels is one of criminality and that it is necessary to investigate which localities are affected.
>
> - Problematic hostels have been identified and the Government has undertaken as a matter of urgency to address and deal with the problem in relation to those hostels that have been associated with violence.
>
> - Measures like fencing and policing to prevent criminality by hostel dwellers against outside aggression, will be taken".

These developments are welcome, providing the South African Government will implement the necessary measures to halt the process of criminalization of the hostels.

96. The Boipatong massacre was widely reported. There were allegations by witnesses that the attackers were transported to the site in police vehicles and that whites were among the attackers. There have also been hints of a possible police cover-up.

97. The Times of 23 June 1992 reported that the killing by police of three demonstrators protesting the massacre in Boipatong was possible because of legislation that gives the police the right to kill a person suspected of a range of crimes (including sedition, murder, robbery and receiving stolen goods) if they do not submit to arrest. Thus, under the Criminal Procedures Act and the Internal Security Act, the decision by individual officers to fire into the allegedly unarmed crowd could be justified.

98. The Weekly Mail of 26 June-2 July 1992 and The Times of 27 June 1992 outlined testimony heard by the Goldstone Commission of a "covert 'Koevoet' unit" of over 40 men in a hostel in the eastern Transvaal. Allegations that the unit took part in the Boipatong massacre were denied by police lawyers and

head of the SAP General Johan van der Merwe, despite ANC claims that two witnesses would testify that the unit did travel from the hostel to Boipatong to take part in the massacre. The Weekly Mail also reported that Boipatong residents believed the attack was motivated by a desire to avenge the killing of a Boipatong-based IFP supporter. The article also cited claims by witnesses that the evening before the attack they saw police taking down barricades erected by local residents and forcing local defence units off the streets.

99. The International Herald Tribune and The Independent of 12 August 1992 noted the development that vital evidence in the Boipatong inquiry, i.e. tapes of radio transmissions between police officers before, during and after the attack, had been erased, and that it had been alleged that the tapes had been deliberately erased to protect the police. Seven Boipatong residents reportedly claimed in their testimony that police armored vehicles had delivered Inkatha attackers to the township. The Weekly Mail of 6-12 November 1992 reported that British Intelligence specialists, called in to examine the tapes, had concluded that the erasure of the tapes "may not have been accidental". It was reported that Justice Goldstone was forced to disregard the findings because the specialists refused to testify in order to maintain a British policy of not divulging intelligence methods.

100. In its 13 August 1992 edition, Le Monde reported that on 11 August, a spokesperson for the SAP had announced that all recordings of police communications on the day of the Biopatong massacre had been erased accidentally, as a result of what was termed a "technical problem".

101. The Independent of 13 August 1992 reported that Sergeant Elsa O'Reilly of the Internal Stability Unit testified that she accidentally erased 13 hours of tape-recordings containing evidence crucial to establishing the role played by the police in the Biopatong massacre. It was further reported that Ms. O'Reilly had been operating the system for nearly three months when she made the error, and that she became aware of it only when investigators asked for the tapes from the night of the Biopatong massacre.

102. The Weekly Mail of 14 to 20 August 1992 reported that a Special Constable in the SAP who had told the Goldstone Commission that he had seen a

"Hippo" (an army vehicle) in Biopatong on the night of the massacre testified that, a week after the killings, he was asked by a SAP captain to change his statement.

103. The Weekly Mail of 28 August - 3 September 1992 reported that the dismissal of 19 generals had been recommended a month earlier in the Waddington report which was submitted to the Government. It was reported that in a confidential, four-page assessment of the SAP, the report is alleged to have recommended a "gradual purging" of the "high command". It was also reproted that the exiled SAP security branch captain Dirk Coetzee claimed that the removal of the 19 generals represented a virtually insignificnt action, because the "generals who must be removed before the SAP can regain its credibility" still, generally speaking, remained in power.

Ciskei (Bisho) massacre

104. On the front page of its 8 September 1992 edition, The Independent reported the events surrounding the murder by Ciskei defence forces of 28 ANC supporters just inside the Ciskei-South Africa border. A march of unarmed ANC supporters had been staged to demand the removal from office of Ciskei leader Brigadier Oupa Gqozo. ANC had permission for the march and to hold a rally at a Ciskei stadium 200 yards on the edge of the capital, Bisho. As the marchers neared the border, the SAP, who had been escorting them, withdrew. Shortly after, a group of about 200 marchers broke through the barbed wire marking the border; some of them went towards the stadium, and others towards Bisho. It was reported that, at this point, the Ciskei forces opened fire, without warning, on the unarmed group, killing 28 and wounding 200 during a period of five minutes of continuous automatic gunfire.

105. An article in the 15 September 1992 issue of The Times stated that the Ciskei Defence Force was run largely by South Africans either seconded from or recently retired from the SADF; it was alleged further that this group included the commander of the Ciskei Defence Force, Marius Oelsching, formerly a member of the South African military. The article also noted that an Austrian national, Colonel Horst Schubesberger, was in command of the troops "on the ground" on the day of the Ciskei massacre. The article also called

into question the validity of Ciskei's claims that it is independent, pointing out that in 1991 the South African Government insisted on taking control of the Ciskei budget.

106. Le Monde of 2 October 1992 and The Times of 1 October 1992 described the findings of the Goldstone Commission's investigation of the Bisho massacre. The report is an indictment of the Ciskei armed forces for the "disproportionate and deliberate" use of guns and grenades against demonstrators. Even if the Ciskei commander had believed that his forces were under attack, the army had acted in a manner that was "unjustifiable and illegal" and its "indiscriminate and prolonged shooting at innocent demonstrators was morally and legally indefensible". The report also said that it was highly probable that the one soldier killed had been hit by friendly fire. The Commission also criticized an ANC leader for his "irresponsible attitude" in forcing his way out of the Bisho stadium, contrary to the original agreement on the march. The Commission called on the Ciskei authorities to prosecute those responsible.

C. Death in detention and police custody

107. It was reported in the Weekly Repression Report (for week No. 31) of the Human Rights Commission of South Africa that the police released a statement that 68 people had died in police custody during the first six months of 1992. In addition, six other deaths in custody were recorded bringing the total number of deaths in police custody as of July 1992 to 74. As of 24 November 1992, 115 detainees were reported to have died while in the custody of the police.

108. It was alleged by many witnesses and also widely reported in the media and the press that, in a report based on about 200 cases brought to his attention, Dr. Jonathan Gluckmann, a South African pathologist, alleged that 90 per cent of the deaths in detention resulted from police brutality against the prisoners.

109. In its 28 July 1992 edition, The Star reported that the chief state pathologist Professor Johan Laubscher was quoted as saying that he had never worked on a case where the police had been responsible for the death of a

detainee. On the other hand, the Medical Association of South Africa (MASA) expressed its support for Dr. Jonathan Gluckman and called for an independent inquiry into the deaths in police custody. MASA also called on "all members of the medical fraternity to support doctors who were threatened because they abided by the principles of the Tokyo declaration" (which states that doctors should not countenance or participate in torture).

110. The Weekly Mail of 31 July - 6 August 1992, detailing the last hours in the life of Simon Mthimikulu, who had died in police custody, said that according to eyewitness accounts Mthimkulu was beaten, kicked and made to perform physical tasks before dying. It was further reported that Dr. Gluckmann had decided to make his report public following the death of Simon Mthimikulu. Le Monde of 12 August 1992 reported that four prisoners had died in custody during the week-end of 8-9 August 1992, bringing to seven the number of such deaths in 15 days. The Working Group noted with very great concern the allegation of the continuation of ill-treatment of prisoners resulting in deaths.

111. The Weekly Mail, in its 21 to 27 August 1992 edition, reported that forensic psychiatrist Professor Michael Simpson, who had acted as an expert witness in 15 human rights cases since 1985, declared that in many of these cases, there was overwhelming evidence to support claims of torture. The article also described Professor Simpson's description of some of the irregularities in the case of Donald Madisha, a Potgietersrus activist who died in detention in 1990. These reportedly included the diagnosis of Madisha as schizophrenic by the district surgeon and for which valium was prescribed, allegedly the wrong drug for schizophrenia. According to the same article, no valium was found in Madisha's body, although it was claimed that he had been given 10 mg of the drug intravenously, a "flatly impossible" occurrence. Furthermore, the district surgeon gave an impossibly exact time of death, as if "he had been watching the death, and (was) counting the minutes".

112. Le Monde of 24 September 1992 reported that a white policeman had been sentenced to nine years in jail for the beating to death of a prison inmate in November 1990. A second policeman, a colleague, was sentenced to two years for collaboration in the same crime. The HRC said that this was the first case brought to its attention where a policeman had been convicted of killing a detainee.

113. The Working Group deplores the incidents which were reported to have taken place in the past at ANC training camps situated outside South Africa where some prisoners of that organization were said to have been mistreated and tortured. The Working Group welcomes the statement made by Nelson Mandela in October under which the ANC leadership assumes full responsibility for the abuses committed and guarantees that the persons responsible will be duly judged for such acts.

D. Capital punishment and executions

114. According to the representative of the Human Rights Commission of South Africa (HRC), of the 300 prisoners on Death Row, eight were considered to be political prisoners.

115. An attorney representing Lawyers for Human Rights (LHR), involved in the field of penal reform as well as the monitoring of capital punishment, informed the Working Group that in the course of his work he visits Death Row prisoners almost weekly.

116. He referred to the moratorium on executions which was announced in February 1990 and the amendments to the Criminal Procedure Act, 1990, under which the death penalty was no longer mandatory (see E/CN.4/1991, paras. 127-132). He referred to the newly created Review Panel, which consisted of judges of the Supreme Court and legal academics and which had responsibility for determining whether the death penalty would have been imposed if the newly amended law would have been applied, thus allowing it to examine cases in terms of the discretionary powers granted to it. The witness said that this was a highly unsatisfactory situation. A very important feature of the Review Panel, the witness said, was to take over the role of the trial court and decide whether the death penalty should have been imposed.

117. The success of this procedure would depend on the availablility of all the necessary and relevant facts to the Review Panel. In view of the total lack of resources of most persons under a death sentence, the necessary evidence regarding the litigation, including psychological assessments, social reports or criminological reports, were often not available. The witness went on to say that in those cases where the Review Panel was able to intervene,

the results had been positive. Nevertheless, it was clear that the fate of prisoners on Death Row was dependent on the resources they could muster. The witness further stated that the vast majority of the people imprisoned annually were semiliterate or illiterate, had no legal representation and could rely only either on the Legal Aid Board, which was underfunded and was not in a position to assist meaningfully the majority of people in criminal trials or, alternatively, the Public Defender Programme which operated only in Johannesburg. At the time when the witness testified, there were approximately 300 prisoners under sentence of death, who were being held in Pretoria.

118. The witness informed the Working Group that on 17 March 1992 the Minister of Justice announced that 17 of those prisoners had exhausted all available legal remedies and that the law would therefore take its course; no dates were fixed for the executions. As a result of intense pressure brought to bear upon the Government by political organizations and human rights organizations, including LHR and others, it was announced three days later that there would be a moratorium on all further executions.

119. The witness stated that while it was gratifying that no executions had taken place in the previous 2 1/2 years, the imposition of death sentences continued.

120. According to information received on 12 November 1992 from LHR and HRC, three prisoners on Death Row in the so-called "homeland" of Bophutatswana, Steven Mashinimi, Samuel Mnisi and Jonathan Molema, were to be executed on 17 November 1992. After intense pressure was brought to bear upon the Government of the so-called homeland of Bophutatswana, it was announced on 14 November that there would be a stay of execution for a period of 90 days in order to permit the three prisoners to pursue legal remedies which were not yet exhausted. The Special Rapporteur on extralegal, summary or arbitrary executions intervened on behalf of the prisoners who were threatened with imminent execution by means of an urgent action procedure.

121. The Sowetan of 24 March 1992 claimed that the moratorium on executions had been lifted and 17 criminals on death row were to be hanged in April. President De Klerk had announced that all executions would be suspended

pending a review of the legal process pertaining to the death penalty. The mandatory imposition of the death penalty was abolished and convicted persons were granted automatic right of appeal. If the death penalty was confirmed by the Appellate Division, the convicted person would be required to petition the President within 21 days, after which an advocate would be appointed to petition on his behalf.

E. Administration of justice

122. Referring to the judiciary, a representative of LHR said that the system of criminal justice was undergoing a crisis of credibility. In order to keep in step with the changes in laws leading to the repeal of discriminatory laws, there was a perceived need for re-education of the judges to enable them to adjudicate according to the new thinking.

123. The same witness referred to the inadequacies in the functionning of the court system and administration of justice. In order to create confidence in the system, he said, it was necessary that it be perceived as a fair and just system presided over by impartial judges, that would afford protection to the wronged who seek recourse to justice. In this respect, the witness referred to the need to appoint judges who would have the necessary sensitivity and awareness of the background of the accused persons in order to make equitable and just decisions. It was important to tackle the sensitive question of judicial education and creating an understanding for the application of standards and the imposing of value judgements which were relevant to the realities of the lives of those who appeared in court before them. Furthermore, the whole system of appointment of judges needed to be reorganized in such a way that the judiciary reflected a balance in terms of representation of all segments of life. The judiciary, the witness further stated, has a particularly important role to play during the period of transition by helping to move away from maintaining the status quo towards a more dynamic role in tranforming the legal system. The witness also referred to the lack of adequate legal representation of accused persons and stated that a system of legal aid, available to all those in need, would facilitate fair trials.

124. The Weekly Mail of 3-9 July 1992 reported that despite the precedent of a Supreme Court finding, the Minister of Law and Order, Hernus Kriel, dismissed the claims of Ida Radebe and Nomagoli Zulu for 100,000 rands in compensation for the suffering they had endured as a result of being shot by police during the Trust Feed incident. Minister Kriel is reported to have dismissed the charges on the ground that, under the Police Act, charges of this nature must be made within six months of the alleged offence. Both Radebe and Zulu claimed that their attackers had concealed their identity as policemen at the time of the attack, and continued to conceal their status as policemen (with the help of other policemen) after the attack occurred.

125. The Independent of 14 August 1992 reported that the Government's call for a "blanket amnesty" for those accused of apartheid crimes, would be difficult to pass, given the emerging evidence linking the Chief of Military Intelligence General van der Westhuizen to four political assassinations, and the threats on the life of a policeman willing to testify to the Goldstone Commission that he saw members of the SAP assisting Inkatha members on the night of the Boipatong massacre.

126. The Guardian of 28 August 1992 reported that the South African Government would dismiss 13 police generals in accordance with the Waddington report's recommendations that incompetent and controversial staff officers be relieved of their functions. While it was hoped that this initial step was only the first phase of a continuing reform process, there was disappointment that the Government failed to dismiss those officers with the most notorious reputations. A total of 19 generals - 6 already having reached retirement age - out of 55, were to leave the force. It was further reported that Major General Jac Buchner, commander of the KwaZulu police, Lieutenant-General Basie Smit, head of the security branch at the time of the "Inkathagate" scandal, and the Commissioner of Police General Johan van der Merwe were conspicuously absent from the list.

127. The Weekly Mail of 28 August - 3 September 1992 reported that the dismissal of 19 generals had been recommended a month earlier in the Waddington report which was submitted to the Government. The report, in a confidential four-page assessment of the SAP, is alleged to have recommended a "gradual purging" of the "high command" of the SAP. In an article in the same

edition, exiled SAP security branch captain Dirk Coetzee was quoted as saying that the removal of the 19 generals represented a virtually insignificant action, as the "generals who must be removed before the SAP can regain its credibility" still, generally speaking, remained in power.

128. Le Monde of 23 October 1992 reported the promotion of three non-white police officers to the rank of Major General, the first time non-whites had achieved such high ranks. This historical development was part of the Government's strategy to reform the police forces, which included the removal of the 13 white generals.

129. It was reported in The Sowetan of 6 Novmber 1992 that on 3 November President De Klerk had signed the Further Indemnity Bill into law which, it was reported, would result in a pardon for those security force members who might have assassinated political opponents. According to reports in The Citizen of 31 October 1992, under a disclosure clause, the members of the National Party supported the call by the opposition parties for the public to be told the name and crime committed by any person to whom indemnity was granted.

F. Political trials

130. The representative of the Human Rights Commission of South Africa (HRC) reported that during the period July 1991 to June 1992, 350 political trials, involving 3,567 accused, had been completed. Of these accused, 613 persons paid admission of guilt fines and 235 persons were convicted, of whom 31 received prison sentences. It was further reported that of the rest, 214 were acquitted, 88 were granted indemnity during their trial, judgement was reserved in the cases of four people, one defendant absconded, charges against 36 were struck from the roll and charges against 2,389 were withdrawn before the trials started.

131. It was stated by the same witness that a feature of political trials during the period under review had been the high number of defendants per trial. It was further reported that a further 115 known political trials were in progress, involving 1,859 accused.

132. According to written information provided by Amnesty International, the Further Indemnity Bill, which had been rejected in October by Parliament and later adopted by President De Klerk through a "deadlock-breaking" mechanism by referring the bill to the 60-member President's Council, was approved on 30 October 1992. The Bill confers on the President the power to appoint a National Council on Indemnity to consider applications for indemnity from any person who has "advised, directed, commanded, ordered or performed ... acts with a political object". It was further reported that the Bill defines politically motivated acts in extremely vague terms. It was said that the President had appointed two active judges and a retired judge as members of the National Council.

G. Political prisoners

133. The representative of LHR stated that although no accurate figures were available, approximately 300 political prisoners were believed to be still incarcerated; he referred to Mr. MacBride, Mr. Mandele and Mr. Rikube, among others. The mechanisms created to deal with political prisoners were far from satisfactory because the Audit Committees, or Indemnity Committees, as they were called, were merely advisory and their deliberations confidential. In addition, the membership of these Committees did not include anyone from interested parties. After referring to cases where, after due process, a political prisoner should have been released but was not, the witness expressed serious reservations as to the effective operation of the prescribed process and the commitment of the authorities to effect the release of the remaining political prisoners. He further said that this also posed a serious threat to the negotiating process.

134. The representative of the Human Rights Commission of South Africa reported to the Working Group that, following the 30 April 1991 deadline for the release of all political prisoners, her organization still listed 353 detained political prisoners. Of these, 141 were described as "audited" prisoners, i.e. prisoners eligible for categorization as political prisoners and, therefore, candidates for release under the Pretoria Minute.

135. The same witness explained that this figure was arrived at after "audit" meetings between the Human Rights Commission of South Africa, LHR and the Department of Correctional Services (DCS). However, the process was halted by DCS without any explanation.

136. The South African Government agreed to release the remaining prisoners, identified by the ANC as political prisoners who had committed offences before 8 October 1990. One hundred and fifty of them were to be released immediately, and the others before 15 November 1992. At the 852nd meeting of the Working Group in Geneva, the representative of the PAC said that his organization had identified 67 political prisoners who still remained incarcerated and that 13 political prisoners had been released on bail although no charges had been brought against them. At the time of the finalization of the report the Working Group had not received any information regarding the remaining political prisoners.

137. The Independent of 26 and 29 September 1992 reported that 120 political prisoners had been released as part of an agreement between the Government and the ANC under which the ANC would return to the negotiating table. Among the most publicized release was that of Robert McBride. Another notable release was that of Barend Strydom, the white supremacist convicted of killing eight blacks at random in 1988. According to The Independent of 5 October 1992, in an interview with the Afrikaans newspaper Rapport, Mr. Strydom said: "I am not sorry. To have regrets would have implied that I did nothing (sic.) wrong. If necessary, I would murder again. ... My action was not impulsive but fully planned ahead of time". The Government argued that it released Mr. Strydom because he fell under the guidelines established for political prisoners.

138. The Times of 17 October 1992 and The International Herald Tribune of 17-18 October 1992 reported that the South African Government had proposed measures on 16 October 1992 to give President De Klerk a free hand in pardoning apartheid crimes. However, Justice Minister Kobie Coetsee said that a general amnesty, including one covering crimes by ANC members, would have to be negotiated with the ANC before a transfer of power to an interim government. On 22 October 1992 The International Herald Tribune reported that Parliament had rejected a proposed bill which would have concealed the

identities and crimes of those being pardoned, but said that President De Klerk was seeking to overrule the decision of Parliament. The Weekly Mail of 30 October - 5 November 1992 noted that President De Klerk had never used that particular mechanism to overrule Parliament before (see paras. 129 and 132 above).

H. Return of political exiles

139. At the Working Group's 836th meeting, a witness on behalf of the Repatriation of South African Exiles gave a brief account of his work in conjunction with staff of the United Nations High Commissioner for Refugees (UNHCR) together with nine para-legals assigned to major centres of the country, under the Memorandum of Understanding agreed with the Government of South Africa.

140. In his testimony before the Working Group, he stated that at the time of his testimony, 12,000 political exiles had returned to South Africa. He referred to the difficulties they faced upon their return under the terms of the agreement between the Government of South Africa and UNHCR. Although the Memorandum of Understanding guaranteed the return of the exiles in safety and dignity, the witness alleged that it was not respected by the Government of South Africa. He stated that a very narrow and restrictive interpretation of what constituted political offences was applied to the political exiles in question. It was alleged that, on arrival, the returnees were arrested and charged with political offences committed prior to their departure from South Africa, and that some of them were subjected to persecution, torture, arbitrary arrest and detention. Harassment by the SAP and Internal security forces also extended to their families. He said that his organization was aware of at least three returnees who had disappeared without any trace.

141. The witness referred to the provisions of the Memorandum of Understanding, in particular the following provisions which, he alleged, were contravened by the South Africa authorities:

"Preamble: Para 2 states "that the Government and other concerned parties are committed to the creating of conditions conducive to the promotion of the voluntary repatriation of South African returnees in complete safety and dignity".

Para 4 stated that "the government has already taken a series of measures which in effect constitute a general amnesty ..."

Article 3(a): "The Government is willing in the interest of the process of reconciliation ... to grant amnesty to returnees in respect of political offences ..."

Article 3(b): "Accordingly, returnees ... shall after clearance by the Government, peacefully return to South Africa without risk of arrest, detention, imprisonment or legal proceedings, whether civil or criminal ..."."

142. The witness further stated that according to the agreement reached regarding the UNHCR's protection role, those who had returned either spontaneously or in an organized manner prior to the establishment of a UNHCR presence in South Africa would be considered as returnees, along with the so-called "Voluntary Repatriation Application Form" returnees. It was on this basis that UNHCR had intervened on behalf of returnees who were detained in Bophutatswana and Ciskei in late 1991. It was also on that basis that UNHCR was prepared to extend assistance to some 7,000 returnees who had come back prior to November 1991.

143. The witness then gave an account of the following killings alleged to have been committed by the police and the security forces of returnees and/or close relatives reported to his organization:

(a) Siyanda Mkhize was killed on 4 January 1992 in Natal, allegedly while fleeing after having stolen a police gun and he was shot dead while fleeing. The matter was reported to the SAP, but no action was taken;

(b) Enoch Lifiedi was shot at while waiting for a taxi in Natal on 22 September 1991, and was subsequently hospitalized. He died in hospital. Although the matter was reported to the SAP no action was taken;

(c) Sifiso Sosibo was shot dead by members of the combat force patrolling in KwaMashu township in Natal on 20 July 1992;

(d) Sthembiso Ngobose was walking with three friends to a nearby shop where a robbery was in progress. On arrival, the police fired at them, thinking they were the robbers, and Ngobose was fatally wounded;

(e) Fortune M. Ncwane was shot and killed on 21 March 1992 in Natal, in a conflict between Inkatha, ANC and KwaZulu police;

(f) Jabulani Mekhoba, Steven Mkhulisi and Moses Mkhize were shot while they were inside Jabulani Mekhoba's caravan;

(g) Moses Mzwakhe Nhlapo was shot and killed by police while he was being harassed by a group called Khetisi, affiliated with Inkatha;

(h) On 25 April 1992, Mpiyakhe James Mthombeni was visited by police. The next day, unknown men came to his home and shot him. He was admitted to Baragwanath hospital and treated for bullet wounds. On 29 April 1992, seven unknown men wearing balaclavas came to his home, where they shot and killed his father in front of his family, and then drove off;

(i) Ephraim Lefiedi was arrested in December 1992 and charged with pointing a firearm. His case was suspended indefinitively. He was Later arrested a second time and charged with possession of a firearm. His case was remanded to 6 February 1992. On 24 January 1992 he was shot and killed at his home. On 24 April 1992 his entire family was killed;

(j) In early July 1992 George Mahale was killed by the police who raided his home, allegedly looking for arms and ammunition.

144. The same witness also cited the deaths of Patrick Masubo, Mongezi Ralph Ngcobo and James Medupe who were shot and killed by unknown men.

145. The witness further testified that most of the 72 returnees who were arrested claimed that they were tortured or severely beaten.

146. The witness stated that his organization was notified of several cases of arrest and detention of returnees who thought they had either been indemnified or cleared within the terms of the Pretoria Minute or the

Memorandum of Understanding. While many of them were subsequenly released, either unconditionally or on bail, many others remained in jail. He cited the following people, who had returned after filling in the Voluntary Repatriation Application Form and who were charged with offences committed prior to their flight into exile:

(a) Ernest Mboneli Didishe was cleared on 4 December 1991 and returned to South Africa on 13 January 1992. He was arrested on 24 March 1992 in Grahamstown and questioned in relation to a murder committed in 1987;

(b) Edward Hlongwane was cleared on 11 December 1991 and he returned from exile on 12 March 1992. He was arrested on 14 March 1992 and kept at Acornhock police station after being charged with assault and pointing a gun at the police;

(c) Jackie Malaza was cleared on 11 December 1991 and returned to South Africa on 12 March 1992. He was also arrested on 14 March 1992 and kept at Ermelo prison;

(d) Ntsikelelo Mange was cleared on 31 March 1992. He returned on 24 April 1992 and was arrested on 6 May 1992;

(e) Bongani Buthelezi was arrested on 11 March 1992 in Ntuzuma and is now in jail in Durban. He was severly beaten and tortured.

147. The witness said that harassment and intimidation of returnees and their families by the SAP and internal security forces was on the increase. Describing their modus operandi, he said that they arrived under cover of darkness, surrounded the home, used tear gas or forced their entry, and interrogated the returnee, regarding his activities while in exile and sometimes beating him severely. They often asked for information about other returnees and ANC activities abroad. The witness said that since the beginning of 1992, almost 100 cases of harassment and intimidation throughout the country had been reported to his organization. Referring to the escalation of violence in the Pretoria, Witwatersrand and Vaal area (PWV), the witness alleged that most attacks were launched from hostels.

148. It was also alleged that ten people were shot by police in Natal, four were killed in PWV and one person was killed in the Orange Free State; the victims were either returnees or close relatives.

149. The witness described an incident which took place on 8 June 1992: at 11.00 a.m. a contingent of 500 heavily armed members of SADF and SAP forced entry into Sebokeng Reception Centre, which was provided to NCCR by the Government under the Memorandum of Understanding signed between the South African Government and UNHCR. They conducted a search without a warrant, harassed and intimidated the inmates and ransacked the room. Contrary to the agreed procedure under the Memorandum of Understanding, neither UNHCR nor NCCR had been previously informed of the raid.

150. The witness informed the Working Group that, in a letter dated 3 July 1992, the Department of Home Affairs, referring to the above incident, informed NCCR that on the evening of 8 June 1992, a small contingent of SAP had carried out a cursory search in the Reception Centre in response to allegations that there were illegal firearms on its premises. According to that letter, the police had requested permission to enter the Centre and the search had been carried out legally and with a very cordial and friendly attitude. The letter further stated that allegations of harassment and intimidation were unfounded; all occupants of the Centre had been treated with respect, in accordance with the Police Code of Conduct.

151. The transfer of inmates who were accused of contributing to the Boipatong massacre - mostly Inkatha members - from the now closed KwaMandala hostel to KwaMaziza, a hostel situated next to Sebokeng Reception Centre, has raised concern about the safety of the returnees, who are mainly ANC members. The witness added that such hostels constituted a source of danger for the returnees. The Working Group was particularly concerned about the conditions in which hostel dwellers live. It was repeatedly brought to their notice that hostel dwellers were mainly members of IFP, and that most hostels were for males only.

152. A representative of ILO also stressed the importance of addressing the issue of hostel dwellers. He said that the living conditions in the single-sex hostels needed immediate attention. Numerous other witnesses also

testified that hostel dwellers posed a permanent threat to the peaceful pursuit of life in the black townships and the outskirts of Johannesburg.

153. The Independent of 28 January 1992 reported that UNHCR had threatened to suspend its programme to repatriate South African exiles because of the violation of the Memorandum of Understanding. It was reported that a young ANC supporter, Enoch Matli, was arrested and allegedly beaten by police in Bloemfontein after he returned from Botswana with 130 other exiles under the protection of the UNHCR. The Justice Department had granted him indemnity from prosecution for the offence of leaving the country illegally. The report alleged that Mr. Matli was later accused of assaulting a policeman and stealing his revolver before he fled the country for Botswana in 1990. Under the repatriation agreement, if the Government offers indemnity on one charge, it is obliged to inform the United Nations of any additional charges.

154. The Weekly Mail of 19-25 June 1992 reported the allegations of three Transvaal township residents that they had been tortured by the police. The torture, including electric shock, suffocation and beating, allegedly took place at police stations in Vanderbijlpark (Flora Garden Station) and Soweto (Protea station). Two of the victims, who were recently returned ANC exiles, claimed that the police had asked them for information about ANC activists.

II. SPECIFIC PROBLEMS AND PRACTICES OF THE APARTHEID POLICY

A. The situation after the repeal of apartheid legislation

155. A representative of the Legal Department of ANC referred to the abolition of the so-called "pillars of apartheid" (see E/CN.4/1992/8, paras. 144-169) and said that notwithstanding the removal of some of the apartheid legislation, the deep-rooted structural inequalities engendered by decades of apartheid system could not easily be dislodged. He referred to the repeal of the Land Acts of 1913 and the Development Trust Act of 1936.

156. The same witness said that the White Paper on Land Reform, which was issued in March 1991, referred, inter alia, to the question of private ownership of agricultural land which the Government viewed as the "basis of an established and successful agricultural industry". In spite of widespread

opposition, both from within and outside Parliament, the Abolition of Racially-based Land Measures Act was passed in June 1991, thus providing for a repeal of the Black Land Act and all other provisions regarding the acquisition and exercise of land rights according to race. The former Act, however, did not in any way affect the legal status in the Bantustans. The witness said that the recognition that the new legislation accords to the validity of title deeds held by white South Africans, who acquired them through unjust means, made it impossible to redress the accumulated injustices in the past. The witness referred to the appointment of an Advisory Commission on Land Allocation created by the Act to make recommendations to the President regarding the issue of land allocation. He considered the recommendations to be inadequate because the terms of reference were not wide enough and were confined to land belonging to the State or state institutions which had not yet been developed or allocated for a specific purpose. In addition, the witness pointed out that the Commission was purely advisory and had no powers to expropriate land for compensating those freehold title-holders who had been victims of forced removals and other discriminatory practices.

157. Twenty communities which were victims of forced removals, together with the National Land Committee, rejected the Advisory Commission because its membership was not representative: none of the five names proposed by them was appointed.

158. The abolition of the above laws has merely thrown the question of land acquisition to the mercy of market forces, the witness said, and opportunities for blacks still remained limited due to a lack of access to capital. The witness also alleged that there was evidence that some of the land held by the State, which was the subject of dispute between the State and certain communities, was being sold while these communities were in the process of presenting their cases to the Government-appointed Advisory Commission.

159. The same witness then referred to the Population Registration Act Repeal Act, 1991, section 1 (3) of which states that, "The population register as compiled in terms of the Identification Act, 1986 (Act No. 72 of 1986), and as it exists at the commencement of this Act shall remain in force and of effect until the repeal of the Republic of South Africa Constitution Act 1983 (Act No. 110 of 1983)".

160. The witness said that the Act regulated franchise, mobility, residential rights, welfare benefits and services provided by the State on a racial basis. The prevailing tricameral Government provided for by the Constitution, he said, was based on the racial classifications contained in the Population Registration Act. He said that although that Act had been abolished, the black majority of South Africa still remained disenfranchised. Thus Africans, who constitute 75 per cent of the population, were totally excluded from the decision making process. Furthermore, the Population Registration Act Repeal Act, 1991 provides that only those born after the date of the promulgation of the Act (i.e. June 1991) would no longer be classified in racial terms. It may be noted that those born before that date still retained their racial classification. The witness said that the present situation of the vast majority of the black population had not changed in any way after the repeal of the Population Registration Act.

161. The witness also noted that the Group Areas Act of 1966 and the Local Government Affairs Free Settlement Areas Act of 1988, were repealed under the Abolition of Racially-based Land Measures Act of 1991. The witness then stated that at the time of these repeals, the Government also proposed a residential environment bill, which was intended to introduce regulations governing "urban standards". The witness alleged that the bill sought to allow residents of individual suburbs to write their own by-laws pertaining to "the aesthetic appearance of any premises, hygiene, over-crowding and the removal of nuisance". In spite of fierce opposition from political and community-based organizations, provisions were made under Chapter III of the Abolition of Racially Based Land Measures Act, according to which residents of a neighbourhood could set norms and standards to be followed by all who live in it. The witness alleged that this was meant to protect the interests of the whites and constituted a hurdle for the black people who wished to own property in those areas. Finally, the witness said that the repeal of the Group Areas Act had benefited only a few middle class members of the black community and that the situation could only be redressed after the installation of a democratic constitution followed by affirmative action measures.

162. The International Herald Tribune of 15-16 August 1992 reported that "real change (in South Africa) had often been a chimera" and that the result

had been "a kaleidoscope of half-reforms and partial changes". The article illlustrated this charge by pointing out that (a) the apartheid education system had remained largely untouched; (b) the electoral system remained unchanged; (c) in response to elimination of the Separate Amenities act, South African village authorities had rendered amenities inaccessible to most blacks by raising the price of admission, and (d) there had been little reform of the police.

163. The Guardian of 7 January 1992 reported that thousands of young whites had failed to report for military training but that the SADF was reluctant to prosecute young offenders, who face up to six years in jail. The Defence Act, according to the article, still contained a clause restricting compulsory national service to whites, although the extension of conscription to all races was not practicable until all races were allowed the right to vote.

B. Continuation of land transfer to the so-called "homelands"

164. It was reported in the Sunday Tribune of 29 September 1992 that the South African authorities were continuing with their plan to transfer 1.2 million hectares of land to the self-governing homelands and that 600,000 hectares of this would go to KwaZulu.

165. According to news reports of 24 Septmeber 1992 published by Echo, the affected land fell under the Ministry of Land and Regional Affairs following the abolishment of the South African Development Trust (SADT) in April 1992. The land in question is situated in Edendale, Landanville, Impendle, Eastcourt, Matatiele and Bergville.

166. According to information received from the Association for Rural Advancement (AFRA), when the planned transfer was first made public, opposition was expressed from many quarters. The Democratic Party reportedly rejected the plan and said in a statement in August that "it is incumbent upon the Government to consider first any recommendations of the Advisory Commission on Land Allocations, submissions by the affected communities and then to negotiate an acceptable practical solution". The South African Agricultural Union (SAAU) also opposed this plan and is reported to have

stated that it believed no state land should be given away until land restitution arising from claims by people dispossessed of land under apartheid laws had been dealt with satisfactorily.

167. Under the proposed plan, Clermont, which previously resisted transfer to KwaZulu, is liable to be transferred to the KwaZulu administration. On 9 September 1992 a delegation from the region presented a memo, calling for the "immediate termination of any intention of the South African Government to transfer land to KwaZulu and other bantustans". On 12 September 1992, about 5,000 Clermont residents marched to the local police station to protest against the planned transfer.

168. Clermont has reportedly been a staunch ANC stronghold for the past two decades. ANC presented a memo in September 1992 to the Department of Home Affairs lodging its protest against the transfer. According to AFRA there is a need for proper consultation between the Government and the communities concerned.

169. The Working Group took note of the above-mentioned events and considered that such action was counterproductive when negotiations for a new constitution were being planned and which would certainly address the issue of the validity and existance of the so-called independent and self-governing homelands.

170. The Weekly Mail of 18-24 September 1992 reported the transfers by the Government of land to several homelands, and discussed the importance of land as a major element in the negotiations for a federal option for South Africa. The Government had recently announced the transfer of 600,000 hectares of State land to the KwaZulu administration and another 600,000 hectares to other homelands' administrations, in an alleged effort to strengthen the position of KwaZulu in a future federal arrangement. This action allegedly contradicts the Government's own 1991 White Paper on Land Reform in which the Government undertook to abandon apartheid policies of land allocation, including an end to incorporation of land into the homelands. It was reported that, on the other hand, it had transferred three million hectares of State land to the six homelands in March. The latest transfers apparently took place without consulting the communities that would be affected.

C. The situation of the population in the so-called "homelands"

171. The representative of ILO referred to the situation of black workers in the so-called independent "homelands" which have different labour laws from those in South Africa. Referring to Bophutatswana, which is very close to Johannesburg and Pretoria and where many important industries, including the mining industry, are located, he stated that South African trade unions were not permitted to operate there and that workers were not permitted to carry their trade-union membership cards there. This has presented problems, particularly to trade unions like the National Union of Mine Workers, which has a membership of nearly 300,000. As an illustration of the anomalies created by this situation, the witness said that the same employer with a plant in South Africa and another in Bophutatswana would be subject to two sets of labour laws.

III. SITUATION OF CHILDREN AND YOUTHS

172. The representative of the National Children's Rights Committee (NCRC) testified before the Working Group at its 838th meeting and stated that the children of South Africa had been brutalized under the apartheid system over a long period. Many had died in violent incidents like those which had occurred in Alexandra and more recently in Boipatong. A large number of children who had become orphaned or homeless became targets of abuse and were often rounded up by the police from the streets. She further stated that, in terms of security legislation, detention of children had decreased but many children were still in prison for a variety of reasons. Children might find themselves in prison because, for example, their parents had been arrested; others because they are homeless. All street children in South Africa are black, and lack the protection and the support that they need, the witness continued. The witness stated that it has been established that about seven million people in South Africa are homeless.

173. The witness said that many children, including street children, participated in the "Summit for Children" which was held in June 1992. She referred to the Children's Charter of South Africa, adopted on that occasion, which contained their own suggestions and how they viewed their situation.

174. The representative of NCRC went on to say that the situation of women and children, both vulnerable groups, had deteriorated dramatically as a result of the continuing violence. She quoted Advocate Dullah Omar as saying "at least two generations of children have grown up in South Africa knowing nothing but the daily violence and inequality of apartheid and its destructive consequences. Children have been a particular target of violent repression by security forces and the justice system. Many children have witnessed the death of family members and school friends. Countless others have become innocent victims of exploitation and abuse at the hands of members of both the public and private sectors. Moreover, children of all races and economic classes have been subjected to racism and discrimination of the apartheid education system".

175. Referring to deaths in detention, the witness stated that a substantial number of those who had died in police custody were youths in the 16-19 age group. NCRC had also established that between July 1991 and June 1992, 106 children and 189 women were killed as a result of violence. These figures, she said, account for 10 per cent of the total deaths registered during this period.

176. The same witness said that although legislation to regulate child labour existed, in reality the situation was very difficult. It was estimated that there were more than 60,000 black farm labourers in South Africa, many of whom were in the 8-14 age bracket. The witness further stated that according to the Food and Allied Workers Association there was widespread exploitation of children in the food industry. Children used in the canning industry and on farms were too exhausted to study and the situation was compounded by the fact that farm schools are situated far from the children's homes.

177. As government policy allows registered labour contractors to operate freely, she said that children were easily victimized. Refugee children from Mozambique were particularly vulnerable and subject to exploitation by farmers in Garankulu and Bophutatswana. In that connection, she stated that wealthy black employers, as well as white farmers, were involved. She stated that some employers went to refugee settlements specifically to recruit children, used their labour and when they were due to be paid, reported them as illegal aliens.

178. Referring to the active harassement of children in the streets by the police, drug pushers and prostitutes, she referred to an incident in Pretoria in March 1992 when 8 children died and 12 others were seriously injured as a result of a racially motivated arson attack against a shelter housing street children.

179. The witness said that at any given time there were approximately 1,000 children in prisons in South Africa, who were often incarcerated together with their parents and retained in police cells which, under the provisions of the Child Care Act of 1983, can be used as a place of safety. Street children were liable to be arrested for loitering, misdemeanours and, in some cases, on trumped-up charges.

180. Children continued to be arrested on spurious charges and detained without notification to parents or legal guardians while awaiting trial. The witness further stated that the courts were not obliged to ensure the presence of the accused's parents or guardians at the trial. Contrary to the Prisons Act of 1959, which provides for visits for prisoners awaiting trial, in many cases juveniles were not allowed to contact their families or even asked where their families lived.

181. It was reported in the Star of 21 October 1992 that the South African National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO) had announced that more than 4,000 children were being held in prisons and police cells all over South Africa. It was reported that the children were either awaiting trial or placement in a juvenile facility. According to the Citizen of 23 October 1992, Mr. Carelse, the Deputy Minister of Manpower, Local Government and National Housing, confirmed estimates of about 4,400 in jails in South Africa.

182. In a report entitled "Justice for the Children: No child should be caged", compiled by the Community Law Centre at the University of Western Cape, as reported in The Weekly Mail of 23-29 October 1992, it was stated that children were imprisoned because the law allowed for it if there was no room for them in a registered place of safety or their parents or guardians could not be traced.

183. The seriousness of the situation and the plight of children in prison was highlighted when it was revealed that 13-year-old Neville Snyman was assaulted and beaten to death in October 1992 in a prison in Robertson. According to various press reports in October 1992, it would appear that innocent children are regularly arrested on spurious charges. Due to difficulties faced for various reasons in obtaining legal aid, the children find themselves in prison for long periods before they are finally released. During their stay in prison, they are vulnerable to assault, sexual abuse and humiliation from their cell-mates who are often hardened adult criminals.

184. Although a special Inter-departmental Committee has been appointed by the Government to look into this situation after being severely criticized in this connection, a final report is not expected before the end of 1992, according to reports published by various newspapers in October 1992. In order to alleviate this situation, a campaign has been launched by LHR which, together with other organizations, hopes to provide free legal assistance to as many children as possible. According to information received, the Department of Correctional Services had agreed to provide to LHR the names of children in 16 selected prisons around the country; a similar request was also made to the police.

IV. OTHER FUNDAMENTAL RIGHTS

A. Right to education

185. The representative of the National Children's Rights Committee (NCRC) stated that there were over six million children outside the formal education system. When they get into the formal education system, they find it very difficult to cope and often drop out of school.

186. The representative of the National Education Crisis Committee, in the course of her testimony before the Working Group, stated that in several documents published by the South African Government in the beginning of 1991, it was admitted by the State for the first time that apartheid policies had created serious problems for education, especially regarding the education of black people. The same witness noted that one of the consequences of the

apartheid system was massive illiteracy; documents released in 1990 put the illiteracy rate at more than 50 per cent, a problem not being addressed by the authorities.

187. It was alleged that education in many institutions was based on the South African philosophy of Christian National Education (CNE), which justifies apartheid. The administration of education remained under the control of 15-year-old departments which were based on race and ethnicity. Mass democratic movements and community organizations had demanded the abolition of those departments and the establishment of a single Ministry of Education. The witness said that there were no professional teachers' organizations in black schools, only a teachers' union addressing conditions of service for teachers, and that no practical steps or recommendations had yet been made on how to dissolve the existing structures.

188. The witness also stressed the need to ensure the recognition of democratic structures in education, e.g. the South African Democratic Teachers' Union (SADTU) which has not been recognized as a national non-racial teachers' organization. The witness further referred to the high level of violence at black schools, which was a particularly serious problem and which kept many black children out of school for their own safety, contributing to an already very dissatisfactory situation and preventing black children from completing their education within the expected age limit.

189. At the Working Group's 832nd meeting, the representative of NADEL traced the historical background of the inferior education given to the black population. He stated that compared to the white population, black people were poorly educated and largely illiterate, especially in the rural areas. He said that the pass rate for white and Indian students in matri- examinations, was 80 per cent and above, whereas in the black sector it was barely 40 per cent. The "tribal colleges" created in 1959 under statutes such as the "Extension of University Education" prohibited black students from entering white universities except when prior permission was given, which was rare. This resulted in the strengthening of the bantustan system. Only a small number of black people were successful in entering "white" universities, usually at the post-graduate level. This situation was damaging to black people over a long period of time; however, the witness stated that a change

in these policies was beginning: there were no restriction in regard to university admissions and the number of black students was increasing. But the situation would be fully rectified only after a prolonged effort.

190. The Weekly Mail of 31 January-6 February 1992 and The Guardian of 1 February 1992 reported that 19 teachers were withdrawn from Katlehong township after a white lecturer was set on fire in a local teachers' college, and the Department of Education and Training said it could not guarantee the safety of white teachers. It was reported that the incident was part of widespread township unrest in the Transvaal over education issues including overcrowding, shortages and abysmal teaching standards reflected in poor examination results.

191. The Sowetan of 20 March 1992 reported that in most Soweto schools pupils had boycotted classes to take part in protest actions. The pupils alleged that some of their teachers used foul language in class and came to school drunk. They also complained of the shortage of teachers and books.

B. Right to health

192. The Guardian of 5 June 1992 outlined the controversy surrounding allegations of Government corruption and collusion in profiteering in the relief programmes and food pricing policies. The article also claimed that Dr. Louis Pasques, who had a long history of involvement in violent anti-ANC efforts, had been appointed by the Government to carry out a large relief operation.

193. In an article dated 8 June 1992, The Guardian reported that Thor Chemicals was being investigated for exposing its black staff to mercury poisoning. At least three employees were said to be in a comatose state, with little hope of recovery, as a result of poisoning.

194. The Times of 11 May 1992 reported that South Africa's biggest trade union federation had attacked a government plan to spend 50 times more subsidizing white farmers than feeding blacks starved by the worst drought of the century. COSATU reportedly said that it would mobilize members to collect money for victims of the drought and to demand more Government help. The

Minister of Agriculture, Kraai van Niekerk, said that the Government would spend US$ 3.8 billion over four years to relieve the effects of the drought.

C. Right to freedom of expression

195. The Weekly Mail of 24-30 January 1992 reported that three editions of the ANC Weekly News Briefing (ANC London) were reviewed by the Directorate of Publications. This would seem to illustrate that censorship still existed in South Africa. However, it may be noted here that no additional information on this subject was brought before the Working Group.

V. TRADE UNIONS

196. At the Working Group's 846th meeting, the representative of ILO referred to the report of the Director-General of ILO (Special Report on the application of the Declaration concerning action against Apartheid in South Africa) and stated that there were approximately 200 registered and 47 unregistered trade unions with a membership of approximately 2.75 million and 300,000, respectively, which amounted to about 45 per cent of the economically active population of South Africa. He further stated that the right to take industrial action, especially the right to strike, was not adequately covered in law. This often led to violence when strikes did occur. He said that South African labour laws also did not contain adequate protection of the right to picket. This led law enforcement officers dealing with such situations to perceive picketers as workers engaged in unlawful activities.

197. The representative of ILO stressed the need for training the law enforcement officials in handling strikers and pickets to give them a better understanding and appreciation of the right to the freedom of association and thus avoiding violent confrontation between them and strikers or between strikers and non-strikers.

198. The Working Group was informed that although the number of arrests or detentions of trade union members was very low, the number of trade unionists who had died or suffered harassment was very high. The witness stated that in

the course of 1992, 75 COSATU trade unionists had died in the Johannesburg area. He referred to the difficulty in establishing the identity of the perpetrators, as was the case for violence generally in South Africa, and added that this was also a reflection of the high level of unemployment and crime prevalent in the Johannesburg area. The result of such a situation was the adverse impact it had on the exercise of normal workers rights.

199. The witness further stated that in spite of substantial reforms during the past two years, three important categories of workers remain uncovered by labour legislation in the public sector. They are public sector workers, workers in the agricultural sector and domestic workers, who had no strong trade union movement which could exert pressure on their behalf. These three categories of workers were under review and the South African authorities had prepared draft legislation to rectify the situation. In that connection, the witness referred to the need perceived by South African trade unions for an investment code for foreign investors, who had generally ignored fair labour practices and standards in a blatant manner. This was of particular importance, he said, as South Africa was beginning to be reintegrated into the world economy. The witness stressed the fact that continuing negotiations were under way which provided great potential for progress in reforms in the field of industrial relations.

200. A second representative of ILO gave the background and circumstances which led to the appointment of a fact-finding and conciliation commission on freedom of association, consisting of three eminent persons, to examine the complaint of COSATU alleging infringements of trade union rights in the Republic of South Africa.

201. The Working Group noted that the first session of the ILO Fact-finding Commission took place in Geneva on 21-23 October 1991 and the second session took place in South Africa from 7-22 February 1992 (see E/1992/70). The Working Group noted that an extensive and detailed examination was made of COSATU's allegations as well as of the legal situation as it affects the human rights of the black workers and trade unions in South Africa generally.

202. Further, the Working Group expressed its appreciation for the in-depth, high quality study conducted by the panel of three experts appointed by the

ILO and extended its congratulation to them. Further, the Working Group thanked the representative of ILO for bringing to its attention the report of the Director-General, and endorsed the various recommendations proposed by its Fact-finding Commission.

203. According to The Weekly Mail of 3-9 January 1992, the National Union of Metalworkers claimed that a systematic campaign of terror was being waged against its officials. One incident was reported involving a death threat from a caller claiming to be from the Afrikaner Weerstandsbeweging.

204. The Weekly Mail of 14-20 February 1992 reported that COSATU threatened industrial action if intimidation of its leaders did not stop. COSATU claimed that union leader Moses Mayekiso had been the subject of sustained surveillance over the previous three months, that he had been the object of threatening phone calls, and that he was being followed by a black Opel Kadett.

205. An article in The Weekly Mail of 28 February-5 March 1992 quoted Conservative Party Spokesman Frank le Roux as saying that a ban on black unionism was enshrined in the party's constitution. The Conservative Party would reportedly outlaw black trade unions, force "mixed unions" to expel their non-white members and introduce a system of white labour preference in the white "Volkstaat" if it came to power.

206. The Independent of 25 March 1992 reported that 15 white coal mine supervisors were freed unharmed after being held hostage underground for 12 hours by black workers protesting unfair dismissals, retrenchments and racism.

207. The Weekly Mail of 30 October-5 November 1992 reported that a recent Supreme Court judgement made "a national strike virtually impossible" and placed internationally recognized labour standards out of South Africa's reach. The judgement concerned a case brought by the Steel and Engineering Industries Federation of South Africa against the National Union of Metal Workers of South Africa and allowed employers to allege "irregularities" in strike balloting and thereby frustrate strikes. The clause in the Labour Relations Act (LRA) which the Federation relied on in its claim is one that the ILO Fact-finding Commission had said needed urgent reform to comply with

international freedom of association standards. ILO criticized in particular an LRA requirement that an absolute majority of workers in an industry must vote in favour of a strike.

VI. CONSTITUTIONAL NEGOTIATIONS

208. In his testimony to the Working Group, a representative of the Legal Department of ANC, who participated as an adviser in the negotiating process, provided a brief background to the situation regarding constitutional negotiations as they progressed after CODESA I leading up to the deadlock at CODESA II in May 1992. After pointing out that the first overture for the opening of negotiations had come from the ANC in Zambia in June 1985, supported by a resolution to give maximum cooperation to the Eminent Persons Group, subsequently set up by the Commonwealth Summit in the Bahamas to investigate the feasibility of a negotiated settlement in South Africa, the witness referred to the culmination of those efforts in the adoption in 1989 of the Harare Declaration and the United Nations General Assembly Declaration. The developments eventually led to the pronouncements of the February 1990 and 1991 Pretoria and Groot Schuur Minutes. The witness said that, since the first CODESA meeting in December 1991, 19 parties had engaged in negotiations since the beginning of 1992 and had achieved substantial agreement on a wide range of issues. It was agreed that apartheid should be abolished in its entirety and replaced with a non-racial, non-sexist and democratic order in a united South Africa (see E/CN.4/1991/10, annexes I and II).

209. It was further agreed that the new order should be based on a new constitution, which would be the basis of the fundamental law of the country, with justiciable Bill of Rights protected by an independent and representative judiciary. There was eventual agreement that a new constitution should be drawn up and adopted by an elected body and that such elections would be under the auspices of a Multi-party Transitional Executive Council with executive powers. It was also accepted that elections would be based on the principle of one-person-one-vote, on a common voters' roll, and that the electoral system of proportional representation would be used. With regard to the preparations, it was agreed that the necessary climate for free political activity would be created and, in this regard, it was agreed that the public

media, especially public broadcasting and the security forces, would be placed under multi-party control and supervision so that they would not be at the disposal of one party alone. It was further agreed that an independent and non-partisan Electoral Commission would be established to take overall charge of the preparations for the elections. The laws which hinder free political activity would be repealed or amended, as necessary, the remainder of the political prisoners would be released and the exiles would be allowed to return safely and unconditionally. Of particular significance was the agreement reached that the four so-called "homelands", Transkei, Bophutatswana, Venda and Ciskei, (the TBVC territories) would be re-incorporated, thus ending the balkanisation and de-nationalisation of millions of people made by the apartheid system. The witness continued, that the negotiations were deadlocked on the questions of decision-making within the elected Constituent Assembly, the mechanisms to be set up to deal with a deadlock in the process of constitution-making, the time frames for the whole process of finalizing the constitution, and lastly, agreement on what could be regarded as basic constitutional principles over the creation of a Senate, whose composition was not clearly defined. The Senate, which could consist of representatives of a minority, would be vested with a power to veto the elected representatives of the majority in the country. It was considered to be more appropriate for the Constituent Assembly and not CODESA, to decide upon the creation, composition and powers of a second House of Parliament.

210. The witness said that only those solutions based on internationally recognized democratic principles and practices would be acceptable. Furthermore, power-sharing with a Government which is not installed on the basis of universal suffrage was not acceptable.

211. Although the ANC suspended its participation in formal constitutional negotiations in June 1992 following the Boipatong massacre, contacts between the ANC, through its Secretary-General Cyril Ramaphosa, and representatives of the South African Government, led by Minister of Constitutional Development Roelf Meyer, resumed at the end of July. While some progress was achieved during these informal talks on the important issues of a Constituent Assembly, the deadlock in the negotiations could not be broken because the ANC considered that its demands had not been adequately dealt with. It underlined in particular the need to address the question of violence and to release political prisoners.

212. Following the shooting of 28 ANC demonstrators by Ciskei security forces on 7 September 1992, President De Klerk acknowledged that "it was simply not possible to negotiate constitutional issues before the question of violence had been dealt with satisfactorily". Consequently, he proposed that a high-level meeting be held between his Government and the ANC to discuss this issue. The ANC accepted the principle of the meeting, providing that it was preceded by preparatory talks.

213. A bilateral summit between delegations of the ANC and the South African Government was held in Johannesburg on 26 September 1992. Both parties agreed that the summit had laid a basis for the resumption of negotiations. A joint "Record of Understanding" was published, outlining the agreements reached on a number of issues. The document further stated that the Constituent Assembly must be elected democratically with a fixed time-frame and should provide adequate deadlock-breaking mechanisms. It was further agreed that during the interim or transitional period the constitution-making body or the Constituent Assembly shall also act as the interim or transitional parliament which would function as a government of national unity within the constitutional framework, provide for national and regional government during the period of transition and incorporate guaranteed justiciable fundamental rights and freedoms. The two parties agreed to hold further meetings in order to address and finalize the following matters which were not completed at the summit: (a) climate of free political activity; (b) repressive or security legislation; (c) covert operations and special forces; and (d) violence.

214. The South African Government also undertook to address the issue of hostels by, notably, fencing a number of them, and to issue a proclamation within weeks to prohibit countrywide the carrying of dangerous weapons at all public occasions, subject to certain exemptions. The ANC, for its part, expressed its intention to urgently review its programme of mass action and to recommend to its National Executive Committee (NEC) that negotiations be resumed. The participants also agreed to hold further bilateral meetings to finalize discussions on a number of matters that could not be completed at the summit. Talks between PAC and the South African Government for the eventual participation of the former in a modified and enlarged forum was another feature that could be regarded as encouraging.

215. However, the leader of the IFP on 27 September 1992 stated that the deals struck between the ANC and the South African Government were "illegitimate" and "unimplementable", and that Zulus would continue carrying traditional weapons. He rejected once again the concept of a Constituent Assembly and announced his decision to break off talks with the South African Government.

216. At the Working Group's 831st meeting, the representative of NADEL gave the background to the constitutional negotiations and stated that although some of the apartheid laws had been repealed, the most important and basic of all apartheid laws remained, i.e. the Constitution. He said that the Constitution assigned members of the South African population to various legal niches in society. Under the Constitution the black people of South Africa did not enjoy the right to vote. The tricameral parliamentary system allowed limited rights to Indian South Africans and "coloured" South Africans, while reserving all power in the hands of white South Africans.

217. The Working Group noted that the black people of South Africa could hope to participate in the governance of their country only after a new constitution was in place. Those born after June 1991, and therefore not classified racially, would be eligible to vote only when they attain their majority, an event which could materialize in 17 years. On the other hand, those born before June 1991 still remained racially classified and in the absence of constitutional change were unable to vote. In spite of massive support by the white electorate for President De Klerk in March 1992 to continue with constitutional negotiations, one of the most basic human rights still remained out of the reach of the black people of South Africa.

218. The representatives of IDASA testified before the Working Group at its 837th meeting, and referred to the assassinations of the IFP leader Wellington Sebelon in Umlazi and S'Khumbuzo Ngwenya, an ANC leader, in the Natal Midlands both of whom had participated in the peace negotiations process. He went on to say that it was of the greatest importance to end the violence so that agreement could be reached in order to set up an interim transitional government. After outlining the background to the breakdown of the CODESA II talks, he said that the referendum held in March 1992 gave massive support to President De Klerk to continue with the negotiations. This support from the

white electorate, the witness said, should be regarded as a form of mass action on the part of white voters. Although the official negotiations were deadlocked, unofficial contacts and discussions continued. Furthermore, the visit of the special envoy of the United Nations Secretary-General, Mr. Cyrus Vance, to South Africa was very much a sign of a negotiation process.

219. The Working Group noted with interest the encouraging development on 16 July 1992 when the Security Council adopted resolution 765 (1992), and invited the Secretary-General to appoint a special representative to recommend, after discussions with concerned parties, measures which would assist in bringing an effective end to the violence and in creating conditions for negotiations leading towards a peaceful transition to a united, non-racial and democratic South Africa and to submit a report to the Secretary-General as soon as possible. The Secretary-General appointed Mr. Cyrus Vance as his Special Representative. Mr. Vance visited South Africa in the last week of July 1992 and duly submitted his report (S/24389) to the Secretary-General. By its resolution 772 (1992) of 17 August 1992, the Security Council authorized the Secretary-General to deploy, as a matter of urgency, United Nations observers in South Africa, in such a manner and in such numbers as he determined necessary to address effectively the areas of concern noted in the report of the Special Representative, in coordination with the structures set up under the National Peace Accord. On 9 September 1992 the Secretary-General announced that he would deploy a mission of 50 United Nations observers in South Africa. A total of 30 observers have arrived in South Africa thus far to assume their duties under the United Nations Observer Mission in South Africa (UNOMSA) (see United Nations Department of Public Information press release of 12 October 1992). The Working Group noted that these observers were posted at "flashpoints" i.e. townships which were particularly prone to violence.

220. Several newspapers in March reported that President De Klerk had received a large vote of confidence for his leadership and the negotiations for a non-racial constitution, winning nearly 70 per cent of the vote in a whites-only referendum.

221. Le Monde of 14 October 1992 and The Times and The Guardian of 13 October 1992 reported an address by President De Klerk to the South African

Parliament in which he reaffirmed the "bottom-line principles" which, he believed, must be agreed upon before an election for a constitutional assembly. These included wide powers for regional government and power-sharing in the executive branch. It was alleged that the former proposal would amount to creating a federal system and the second would keep the National Party in power indefinitely.

222. Several newspapers, including The Times and The Independent of 17 November 1992 and The International Herald Tribune of 18 November 1992, reported a state "dirty tricks" operation sanctioned at the highest levels of the South African army and led by a notorious hit-squad operative working with known criminals to undermine and discredit the ANC. It was reported that one of the plots disclosed by the Goldstone Commission, as mentioned above, included recruiting drug dealers, prostitutes and homosexuals to infiltrate the ANC's military wing, Umkhonto we Sizwe. Allegations that the unit took part in the Boipatong massacre were denied by police lawyers and South African Police Chief General Johan van der Merwe, despite ANC claims that two witnesses would testify that the unit did travel from the hostel to Boipatong to take part in the massacre.

223. Business Day and the Star as well as news agencies reported on 16 and 17 November 1992 the revelations which emerged following the investigations by the Goldstone Commission of a covert operation initiated by a secret Military Intelligence unit of Military Intelligence (MI). On 11 November 1992 it was reported that members of the Goldstone Commission had entered a building where they discovered and confiscated a large number of secret documents concerning an alleged clandestine military plan which could be regarded as evidence of the existence of an official "third force" within the South African security forces which was said to be behind the escalating violence in the country. The confiscated documents revealed the direct responsibility of General Rudolph Badenhorst, former Chief of Military Intelligence, in the establishment of the secret unit, which employed at least 28 persons and cost hundreds of thousands of dollars.

224. It was also reported that SADF had in 1991 used Ferdi Barnard, who had been sentenced for murder and was suspected of having murdered the human rights activist David Webster, to head an operation to discredit Umkhonto we

Sizwe. According to press reports from South Africa, Roelf Meyer, the former Minister of Defence, was fully aware of the situation and it was he who had ordered that Mr. Barnard be withdrawan although no evidence was found to demonstrate that Mr. Meyer had taken action to prohibit the operation.

225. It was further reported that, according to another revelation by the Goldstone Commission, a company used as a front by the secret military project had defrayed the expenses of a mercenary, João Alberto Cuna, for a mission in Natal province in which many ANC members had died. The documents confiscated by the Commission indicate in particular that anti-ANC operations may have been initiated by the Military Intelligence services after the release of Nelson Mandela from prison in February 1990 and the subsequent legalization of anti-apartheid movements. On the other hand, also according to the reports in the press, General van der Westhuizen is believed to have ordered the murder of anti-apartheid activist Mathew Goniwe.

226. According to press releases, Judge Goldstone stated at a press conference in Johannesburg that "the reports confiscated on 11 November were clearly an item of evidence related to that third force". Judge Goldstone requested President De Klerk, inter alia, for greater powers to investigate the activities of the security forces, as well as of private armies and security firms, for their possible participation in clandestine operations. It was further reported on 19 November 1992 that President De Klerk announced the replacment of General van der Westhuizen, Head of MI, by General Pierre Steyn who was until then Chief-of-Staff of the South African Defence Force. President De Klerk stated that he had instructed General Steyn to submit a comprehensive analysis of the SADF's intelligence activities, with recommendations about its possible restructuring.

227. In response to the judge's request to extend the powers of his Commission, the President informed him on 20 November 1992 that the police would place at his disposal the personnel he needed to undertake his investigations; however, he refused to extend the powers of the Commission.

228. The Working Group is gravely concerned about the reported implication of certain high-ranking officials of the Government of South Africa in the so-called "dirty tricks" campaign to destablize the ANC, especially as it

would appear that the same officials are now involved in conducting the CODESA constitutional negotations on behalf of the Government. It is significant that such serious allegations emanate from a Government-appointed Commission of inquiry.

229. According to the most recent information received by the Working Group, the first results of the deliberations of the Goldstone Commission have been guidelines on ways to prevent continued violence; however, the findings of inquiries into specific incidents have not yet emerged. It has been reported that there are now six committees focusing on separate issues:

(a) A committee chaired by Professor Van Zyl Smit, looking into the Mooi River violence between hostel dwellers from President Steyn mine and residents who are supporters of ANC;

(b) A committee studying the taxi wars in the Western cape, chaired by Cape Advocate-General Neil Rossouw;

(c) A committee on the role of hostels in the Transvaal, chaired by Advocate Bob Nugent;

(d) A committee on train Violence, chaired by retired magistrate Gert Steyn;

(e) A committee on the Boipatong massacre, chaired by Justice Goldstone assisted by India's Chief Justice P.N. Bhagwati, Mr. Rossouw and Mr. Solly Sithole;

(f) A committee studying allegations that 200 KwaZulu men were trained by the SADF, related to violence in the Vaal triangle townships, chaired by Justice Goldstone.

The following inquiries have been completed: (a) an inquiry into violence at Tokoza between hostel dwellers and residents; the report is expected soon; (b) The role of Vaal Triangle police safe-houses in violence; the final report is being drawn up; (c) a special inquiry into ways of preventing mass violence during mass action. The Commission will also look into the Ciskei massacre,

although it may not become the subject of a full-scale inquiry. Inquiries by policemen appointed by the Commission will be an important feature of the Comssion's work.

CONCLUSIONS AND RECOMMENDATIONS

A. Observations and Conclusions

230. The Ad Hoc Working Group of Experts on southern Africa has come to the following conclusions.

231. The Working Group welcomes the readiness of the South African Government to open a dialogue with the United Nations concerning the abolition of the apartheid system. It is hoped that the Working Group would enjoy the same cooperation and that the Government of South Africa would authorize a visit by the Working Group as requested by the Commission on Human Rights.

232. The escalating violence in South Africa is a matter of grave concern. It is to be welcomed that some of the events have been the subject of an impartial investigation ordered by the South African Government. It would appear that the police, inter alia, trained to implement and strengthen apartheid policies, is either not capable or not willing to intervene impartially and effectively to protect the lives and property of the black population. This has also been confirmed by reports of reputable lawyers investigating the causes of violence. According to witnesses, the perpetrators of this violence are mainly vigilantes, IFP fighters, death squads and Battalions 31 and 32 and Koevoet units. Further, the dissolution of the notorious Security Units, the Battalions 31 and 32 and Koevoet and their reabsorbtion into the SAP and SADF has been noted by the Working Group. However, these measures cannot be regarded as adequate for the elimination of the fear of the black population in respect of future excesses which may be committed by these mercenaries if they remain in the country. The violence has led to the deterioration of the social and political climate and the delay in the constitutional discussions. The Working Group condemns the escalating violence which continues to affect adversely the social life of the people as well as the economy of South Africa, notwithstanding the fact that economic sanctions have been partially lifted. It may be noted here that the

additional powers given to the police by the Government of South Africa gives the impression that, in effect, a state of emergency is still in force.

233. The Working Group is deeply concerned as regards the numerous acts which were brought to its attention during the period under review and which concern the disclosure of the complicity of the South African Government which used either members of the IFP or individuals or members of other secret organizations with a view to perpetuating the climate of violence. Such acts are likely to undermine the confidence and good faith of the other groups during the constitutional negotiations.

234. The Working Group condemns the so-called "dirty tricks" campaign as far as such covert activities are designed to foster the climate of violence which has prevailed for so long in South Africa, including assassinations, murders and other acts constituting a violation of human rights. Furthermore, activites of this kind are incompatible with the climate of confidence and cooperation essential to promote a positive outcome of the ongoing negotiations for the future of a united, non-racial and democratic South Africa.

235. The Working Group condemns and is very gravely concerned with the adoption on 10 November 1992 of the Further Indemnity Bill by the President's Council after the Bill had been rejected by the South African Parliament. In terms of the new law, the three-member Commission appointed for this purpose has wide powers to interprete politically motivated actions and recommend a general amnesty for all persons who "advised, directed, commanded, ordered or performed ... acts with a political object". Those who have committed crimes under the apartheid system in the services of the Military Intelligence or those who have committed assassinations of freedom fighters or civilians could thus be exempted from judicial process.

236. It has been noted that the South African authorities have removed 13 police generals in response to the recommendations contained in the Waddington report. The Government, however, has failed to remove some of the key officers with the most notorious reputations. In this context, the promotion of three non-white police officers to the rank of major-general has been noted by the Working Group.

237. The Working Group reiterates its concern regarding the living conditions of inmates of single-sex hostels, from where attacks are constantly launched against other communities, and the fact that they constitute a permanent source of tension and rivalry. While it is well known that there is no harmony between the two groups concerned, the Working Group deplores the decision of the Government of South Africa to transfer members of the IFP who lived in KwaMaziza hostel to a hostel next to the Sebokeng centre which houses the majority of the former ANC exiles who returned under the auspices of UNHCR.

238. The fact that the victims of township violence are essentially women and children should be a matter of great concern to the Government of South Africa and the international community. Similarly, violence targeted at train commuters, trade unionists and journalists is a particular preocupation of the Working Group.

239. Reports of deaths under suspicious circumstances in police custody are continuing. As reported by Dr. Gluckmann, a South African pathologist, 90 per cent of the deaths in detention result from police brutalities against the prisoners.

240. The system of review in respect of accused persons sentenced to death is still inadequate to protect ordinary accused persons, not represented by lawyers. The fact that there may be up to 300 prisoners under sentence of death is, under the circumstances, a matter of grave concern to the Working Group. The Working Group feels very strongly that the moratorium on death sentences should continue and that the death penalty should be abolished.

241. According to the testimonies received by the Working Group there is a total lack of confidence in the judicial system which is perceived to be an instrument used to perpetuate apartheid. In this domain, the Working Group has noted that there is a general lack of legal aid as far as the majority of the illiterate black population is concerned. It may be noted that legal aid is limited to Johannesburg only. The Working Group also found cases of obstruction by the South African authorities of the judicial process, for example, those arising out of a trial concerning the Trust Feed case. The Government had indeed opposed the indemnity claims presented by the victims of police brutality, alleging that it was time-barred. It is to be noted that

the victims were unable to file their claims in time because they could not identify their agressors due to the unhelpful attitude of the Government. Lastly in the field of the administration of justice, it was noted with great concern that the decision of the Supreme Court dated 30 October 1992, if followed as a precedent, would make general strikes illegal.

242. Although the deadline for the release of political prisoners has expired and 150 political prisoners have been released, it is a matter of concern that many other prisoners have not yet been released. The Working Group is concerned by the evidence presented by witnesses that there were over 110 political trials involving over 1,800 persons still in progress in South Africa as of July 1992. Although it was hoped that there would be a further release of all political prisoners by 15 November 1992, the Working Group had no information in that regard at the time of the finalization of the present report.

243. The agreement regarding the return in safety and dignity of exiles has not been fully respected by the security forces. The Working Group is very concerned by reports that some of the returnees are in detention.

244. After the abolition of the Land Act and the Development Trust Act, no further steps have been taken to pursue a non-racial land reform; in particular, the legal status of the Bantustans has not been changed for the better. The effects of the abolition of the Group Areas Act have been undermined by the Residential Environment Bill, which was intended to introduce regulations governing "urban standards". One of the main consequences of the Bill will be to exclude some categories of the black population from certain residential areas. In spite of the abolition of the Population Registration Act, the population register compiled in terms of this racial law remains in force and has effect until the South African Constitution of 1983 is repealed. As stated in the Population Registration Repeal Act, 1991, section 1 (3) "The population register as compiled in terms of the Identification Act, 1986 (Act No. 72 of 1986), and as it exists at the commencement of this Act, shall remain in force and of effect until the repeal of the Republic of South Africa Constitution Act 1983 (Act No. 110 of 1983)". Therefore, the racial classification of the vast majority of the South African population - all those born up to the date of the abolition of the said Act in June 1991 - is still valid.

245. The Working Group noted with appreciation the commitment of the South African Government to reform the security laws or any other laws which in the past restricted the rights of trade unions from carrying out their activities unhindered. The main laws which are targeted are the Public Safety Act, the Internal Security Act, the Publication Act, the Fund Raising Act and the Disclosure of Foreign Funds Act.

246. The Working Group repeats its appreciation that some South African laws which are considered to be pillars of apartheid, have been abrogated; these are positive and indispensable steps towards establishing human rights in the country. Although these pillars of apartheid have been abrogated, apartheid still exists; the racially-oriented Constitution of 1983 is unchanged, the negative effects of the abrogated laws have not been eradicated, police brutality has not come to an end and the educational system still suffers from the consequences of the apartheid policy. On the other hand, it is a positive sign that the Government has ordered impartial investigations into events of violence in parts of South Africa; in particular the appointment of the Goldstone Commission must be mentioned.

247. During the period under review, the Working Group noted the efforts of the black population to oppose vehemently the further attempts by the Government of South Africa to make land transfers into the so-called "homelands". The Working Group considers that this would have a negative impact on the ongoing constitutional negotiations.

248. The Working Group deplores the fact that under the relevant legislation applicable in South Africa, children continue to be detained in prisons in the event that they cannot be accommodated in a registered place of safety or if their parents or guardians cannot be traced. The Working Group takes a very serious view of the increase in the numbers of children detained in prisons or police cells in South Africa at present. The incarceration of children without access to parents, deaths in police custody and harassement by the police remain problems requiring urgent attention. Furthermore, other problems affecting children such as exploitation of their labour, homelessness, drugs and prostitution must be given urgent consideration by the relevant authorities.

249. The educational system still suffers from the consequences of apartheid, particularly because the South African apartheid policy of "Christian national education" is still applied and the 15 departments based exclusively on racial and ethnic criteria of race and ethnicity are still operating. Thus, 50 per cent of black children are illiterate.

250. During the period under review the Working Group was also informed of the existence of legislation determining the membership of trade unions on a racial basis which presents a grave danger, especially in the course of the transition period, since this once again enhances the existing divisions within the population of South Africa.

251. It has been noted by the Working Group that the official discussions on a new democratic constitution, which would provide basic human rights, fundamental freedoms and an independent judiciary, as envisaged have been interrupted.

B. Recommendations

252. The Working Group welcomes the observations contained in the report of the Secretary-General to the Security Council of 7 August 1992, and in particular:

(a) The reiteration of the statement of the Goldstone Commission relating to a ban on the public display of dangerous weapons and the fencing of hostels;

(b) That a series of investigations into the functionning and operations of the army and the police, the Umkhonoto we Sizwe, the Azanian People's Liberation Army, the KwaZulu police and, more generally, certain private "security firms" should be undertaken by the Goldstone Commission;

(c) That the reports of the Goldstone Commission should be made available to all signatories of the National Peace Accord within 24 hours of their submission to the President, in order to enhance the impact and credibility of the reports;

(d) That there is a need for prompt investigation and prosecution by the competent departments, as required pursuant to the reports of the Goldstone Commission, in order to enhance the credibility of the law enforcement machinery of the country;

(e) That the United Nations should provide as many observers as necessary to serve in South Africa.

253. The Working Group strongly recommends the implementation of the above with immediate effect.

254. The Working Group welcomes the fact that observer missions of the Commonwealth Secretariat, the European Economic Community and the Organization of African Unity were authorized in addition to those dispatched by the Secretary-General of the United Nations. However, the Working Group considers that in view of the complexity of the problems to be dealt with, the size of South Africa and the continuing escalation of violence, it is necessary to increase considerably the observers deployed at present. The Ad Hoc Working Group of Experts believes that its reports could be of considerable assistance to the observers as a source of information.

255. The Working Group fully supports the various recommendations proposed by the ILO Fact-finding Commission, and the following in particular:

"6. The new Labour Relations Act should be simplified, and structured in such a way as to be readily usable and understandable by all interested parties

"7. No trade union or employers' organization should be entitled by law to limit its membership by reference to race. There should be a transitional period during which a special officer should be appointed with a statutory duty to facilitate, within a given time, the removal of all provisions whereby membership of such organizations, or the holding of office in them, is confined to persons of a particular race.

"8. Security or other legislation which has been used in the past to restrict the right of trade unions to carry on their activities in full freedom should be reformed. The Government has emphasized that the legislation referred to is under review in the Convention on a Democratic South Africa (CODESA). The Commission therefore recommends that its conclusions, in particular concerning the Public Safety Act, the Internal Security Act, the Publication Act, the Fund Raising Act, the Affected Organizations Act and the Disclosure of Foreign Funding Act, should be brought to the attention of CODESA, or such other body as may be entrusted with responsibilities in these fields. Such conclusions should be taken into consideration with a view to ensuring that any future legislation of these matters respects the principles of freedom of association for employers' and workers' organizations.

"9. The anti-union violence which has prevailed in South Africa is totally unacceptable. The Government has acknowledged that the violence requires attention. The Commission draws the attention of the Government to the importance of the principle that workers' rights must be based on respct for civil liberties. On the issue of government interference in trade unions and their activities, the Government should do everything possible to ensure that inquiries into such matters are not hampered by complacency. The situation should, on the contrary, be regarded with the utmost gravity. It requires deliberate, sustained and strenuous efforts aimed at overcoming the threat it poses to life, safety and orderly society. Given the Commission's finding that these circumstances do not conform to international standards relating to trade union rights, which are expressly designated to enable trade unions and their members to carry out their functions in full freedom without interference, and, in particular, for acts of violence against trade unionists or trade union property.

"10. The Commission also considers it essential that effective action should be taken by the responsible authorities to ensure that the Government's commitment to refrain from interference in the activities of trade unions and their members is respected by all

public agencies. Practical measures to this end, such as the establishment of trade union-police liaison committees and police education on trade union functions and rights should be instituted without delay. Further safeguards could include appropriate procedures of internal auditing, official reporting, and external, independent machinery for considering and investigating complaints by trade unions and their members against the police and other public officials."

256. The Working Group recommends that the Commission on Human Rights should reiterate its earlier invitation to the Government of South Africa to improve the living conditions in the hostels, which are a permanent source of tension and acts of violence. In particular, the Commission should request the Government to transfer elsewhere the members of the IFP who have recently been installed at the KwaMaziza hostel.

257. In view of the reported harassment and assassination of witnesses, the Working Group stresses the great importance of providing eyewitnesses and all potential witnesses with the necessary protection from any form of victimization. Guarantees should be established to secure the safety of such witnesses with the help of United Nations monitoring.

258. The Working Group requests the Commission on Human Rights to invite the Government of South Africa to do everything in its power to restore the confidence of South Africans in the administration of justice, especially during the period of transition.

259. The Government should ensure the improvement of the legal aid system and legal representation and should ensure that they extend to all parts of South Africa.

260. The Commission on Human Rights should invite the Government of South Africa to ensure the genuine independence of the judiciary and to refrain from all acts of obstruction with respect to it. Furthermore, the Commission on Human Rights should request the Government to prosecute all civil servants, regardless of their sector of activity or their status, who have committed serious violations of human rights under the international human rights instruments.

261. In this regard, the Commission is requested to authorize the Working Group to update its list of civil servants and other South African government officials who have committed acts in violation of or prohibited under the aforementioned instruments. Furthermore, concerning the administration of justice, the Commission on Human Rights, as well as the international community, should exert pressure on the Government of South Africa so that it grants an unconditional amnesty only to those who have committed acts to combat apartheid.

262. The agreement between the Government of South Africa and the United Nations High Commissioner for Refugees, under the Memorandum of Understanding, should be respected and returning exiles should be accorded an unconditional general amnesty.

263. The South African Government is invited to list all the repealed apartheid laws as well as those still in force. The new constitution should contain measures foreseen for the abrogation of the remaining apartheid legislation including, inter alia, banning orders, registers of criminal records in respect of crimes committed under apartheid laws and land allocations on the basis of race.

264. In order to prepare for a peaceful transition in South Africa and to avoid tensions and acts likely to engender violence on the part of the black population because of the Government's land management policy, the Working Group recommends to the Commission on Human Rights to request the Government of South Africa to establish a consultative body, which would include representatives of the black population, to facilitate a dialogue in an effort to improve living conditions in the rural areas.

265. The Working Group recomends the immediate and unconditional release of all children detained in prisons and police cells of South Africa to enable them to be reunited with their parents or guardians. In the event that the parents or guardians cannot be located, they must be housed in a rehabilitation centre or other place of safety. The Working Group noted the initiative of Lawyers for Human Rights, the National Association for Democratic Lawyers and other organizations in South Africa in organizing a campaign to offer free legal aid to the children who find themselves in prisons and police cells in South Africa.

266. The educational system in South Africa should be transformed into a non-racial system in which the establishment of schools and the educational infrastructure for the now underpriviledged African youth must become a common goal of the highest priority within South Africa and the international community.

267. In order to achieve an apropriate climate for a non-confrontational transition and to improve the relations between the different parties concerned, the Working Group requests the Commission on Human Rights to invite the Government of South Africa to create the appropriate conditions which will facilitate the active participation of all parties concerned in the process of the constitutional negotiations.

268. In order to allow the Working Group to present a complete picture of the situation of human rights in South Africa, within the framework of its mandate, the Working Group requests the Commission on Human Rights to enlist the support of the Secretary-General in order to obtain the authorization from the Government of South Africa to visit that country in the course of 1993.

269. The Working Group requests the Commission on Human Rights to obtain from the various groups or persons who visited South Africa any relevant information likely to help the Working Group to fulfil its mandate.

270. In regard to the forthcoming World Conference on Human Rights, the General Assembly should ensure that an item entitle "Complete abolition of the apartheid system" is expressly incorporated into the draft agenda of this Conference. The Working Group wishes to associate itself with the Conference.

271. In order to continue monitoring the evolution of the situation in South Africa until the complete eradication of apartheid, the Working Group requests the Commission on Human Rights to renew its mandate once again.

Annex I

List of names of persons deemed responsible for the crime of apartheid

1.	Colonel Horst Schubesberger	Austrian national, in command of Ciskei Defence Force troops on the day of the Ciskei massacre
2.	Mr. John Horak	Chairman of the Strategic Committee of the State Council in 1990
3.	General Rudolf Badenhorst	Former Chief of Military Intelligence
4.	Major General Jac Buchner	Commander of the KwaZulu police
5.	General Johan van der Merwe	Commissioner of Police
6.	Lieutenant-General Basie Smit	Head of the security branch at the time of the "Inkathagate" scandal
7.	General C.P. van der Westhuizen	Former Head of South African Military Intelligence
8.	Mr. João Alberto Cuna	Mercenary
9.	Mr. Roelf Meyer	Former Minister of Defence
10.	General van Rensburg	Senior police officer
11.	Mr. Ferdi Barnard	Convicted of murder and suspected to have headed an operation to discredit the armed branch of ANC, Umkhonto we Sizwe and for killing a human rights activist David Webster
12.	Captain Brian Mitchell	South African Police Officer
13.	Mr. Thys Nolte	South African Police Officer
14.	Dirk Coetzee	Captain, South African Police (exiled)
15.	Mr. Barend Strydom	White supremacist convicted of killing 8 blacks at random in 1988

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